

Appendix H

Comment Letters

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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
650 Capitol Mall, Suite 5-100
Sacramento, CA 95814-4700

JAN 30 2015

Mr. Tim Rust
U.S. Bureau of Reclamation
2800 Cottage Way, MP-410
Sacramento, California 95825

Re: Comments on the Central Valley Project Municipal and Industrial Water Shortage Policy
Draft Environmental Impact Statement

Dear Mr. Rust:

Thank you for the opportunity to comment on the Central Valley Project (CVP) Municipal and Industrial (M&I) Water Shortage Policy (WSP) Draft Environmental Impact Statement (EIS). The Draft EIS addresses updating the existing 2001 Draft CVP M&I WSP that would be used by Reclamation to: (1) define water shortage terms and conditions for applicable CVP M&I water service contractors, as appropriate; (2) establish CVP water supply levels that, together with the M&I water service contractors' drought water conservation measures and other water supplies, would assist the M&I water service contractors in their efforts to protect public health and safety during severe or continuing droughts; and (3) provide information to M&I water service contractors for water supply planning and the development of drought contingency plans. The alternatives evaluated in this EIS utilize different methodologies for allocating available CVP water supplies to CVP water service contractors during shortage conditions. This EIS evaluates potential impacts of the M&I WSP over a 20-year period, 2010 through 2030.

Of particular interest to NOAA's National Marine Fisheries Service (NMFS) was Chapter 10 Aquatic Resources, which presented the existing aquatic resources within the area of analysis and discusses potential effects on aquatic resources from the proposed alternatives. NMFS offers the following general comments pertaining to the draft EIS:

1. The CalSim II model was the assessment method used to analyze potential effects of the alternatives on biologic aquatic resources. CalSim II provided average monthly river flows, monthly reservoir storages and elevations, exports, and Delta parameters [Delta outflow, location of X2, and south of Delta exports through the CVP and State Water Project (SWP) Delta facilities] for the alternatives. While analysis of these parameters and their potential affects to listed fish species are important and necessary, the Draft EIS lacked an analysis of proposed alternatives effects on water temperature and how changes in water temperature could potentially affect listed fish species. Specifically, changes to storage and operations at Shasta Reservoir have the potential to result in elevated water



temperatures that could have lethal and sub-lethal effects on egg incubation and juvenile rearing of listed salmon in the upper Sacramento River. In addition, storage and operations changes at Folsom Reservoir have the potential to result in effects to California Central Valley steelhead due to the inability to consistently provide suitable temperatures for the various life stages in the American River. Reclamation has the Reclamation Temperature Model and the upper Sacramento River Water Quality Model to analyze the temperature variability in Trinity, Lewiston, Whiskeytown, Shasta, Keswick, and Folsom reservoirs and the Trinity River, Clear Creek, and the upper Sacramento River. NMFS suggests Reclamation incorporate these models and conduct an analysis of how the proposed changes in flows for each alternative affects temperature, and how potential changes in water temperature could affect listed fish species.

2. NMFS also suggests including information on the measures that Reclamation are going to take to meet water temperature requirements in the 2009 CVP and SWP Long-term Water Operations Biological Opinion (NMFS BiOp) Reasonable and Prudent Alternative (RPA) Actions. This includes providing information on the discretionary and non-discretionary water contracts that provide Reclamation the flexibility to meet the protective requirements of Endangered Species Act listed fish species. For all of the alternatives analyzed in Chapter 10, Reclamation acknowledges that CVP deliveries would change in the Sacramento, American, and Delta Divisions through 2030 compared to existing conditions based on population, growth, and changes in land use. Reclamation also states that the changes in river flow and reservoir storage, especially in dry and critical water years, would not have an appreciable or observational effect on aquatic resources as compared to existing conditions and that minimum flow and storage requirements to protect aquatic resources would be met. However, even under existing conditions, especially in the dry and critical water years of 2013 and 2014, Reclamation has not been able to meet the water temperature requirements in the NMFS BiOp RPA.
3. The Draft EIS should explain why New Melones Reservoir operations, Stanislaus River, and San Joaquin River flows were not included and analyzed as part of this Draft EIS.

In addition, NMFS provides the following specific comments on the Draft EIS:

1. Page 10-31, Table 10-2 – For November, the difference between existing conditions, 5,668 cfs, and the No Action Alternative, 5,442 cfs, is -226 cfs, not -246 cfs. For May, the difference between existing conditions and the No Action Alternative is positive 41 cfs, not negative 41 cfs.
2. Pages 10-31 and 10-32, Tables 10-2 and 10-3 – NMFS suggests redoing the characterization of existing conditions. The September long-term average monthly flow in the Sacramento River below Keswick Dam in dry and critical water year types under existing conditions is not reflective of current operations. To establish existing conditions, the CalSim II model used 82 years of historical hydrology from water years 1922 through 2003 to provide average monthly river flow. This period does not take into account changes to operations due to the NMFS BiOp.

September is a critical time for Sacramento River winter-run Chinook salmon and Central Valley spring-run Chinook salmon egg, alevin, and fry development in the upper Sacramento River. Since the implementation of the NMFS BiOp in 2009, there have been recommendations by NMFS, the U.S. Fish and Wildlife Service, and California Department of Fish and Wildlife through the Sacramento River Temperature Task Group to keep flows in September elevated (compared to previous years) in order to maintain temperatures below 56°F at the temperature compliance point, and to minimize dewatering of redds and stranding of juveniles. The table, below, compares the actual September average monthly flows and those modeled under existing conditions in the Draft EIS. Note that for the dry and critical water year types, actual September average monthly flows were higher than the existing condition in the Draft EIS. The differences in flow could have potentially significant and adverse effects to listed salmonids.

Year	Water Year Type	September Average Monthly Flow (cfs, actual)	September Average Monthly Flow (cfs, existing condition in DEIS)
2009	Dry	6,995	5,471 in Table 10-2
2010	Below Normal	7,410	
2011	Wet	9,738	
2012	Below Normal	8,268	
2013	Dry	6,932	5,471 in Table 10-2
2014	Critical	5,558	4,698 in Table 10-3


3. Pages 10-35 and 10-36 – Reiterating the comment earlier, NMFS suggests including modeling results of the change in flows and how that affects water temperature. Even though there are required minimum flows in the lower American River, changes of up to 12% decreases in dry years and 39% decreases in critical years have the potential to further elevate water temperatures and negatively affect listed steelhead in the lower American River. In the majority of the years since the issuance of the NMFS BiOp, Reclamation has not been able to meet RPA Action II.2, which is to maintain a daily average water temperature of 65°F or lower at Watt Avenue Bridge from May 15 through October 31, to provide suitable conditions for juvenile steelhead rearing.
4. Page 10-38, Old and Middle River Flows – Suggest including a table for changes of Old and Middle River (OMR) Flows for the No Action Alternative compared to existing conditions for dry and critical water years. All the other parameters analyzed for the No Action Alternative compared to existing conditions for dry and critical water years include a table (*e.g.* Delta outflow, X2, *etc.*) except for OMR Flows. In addition, “The greatest decreases in flows would occur...” is a bit confusing. Do decreases in flow mean more negative OMR or less negative OMR? A table would help alleviate the confusion and add transparency.

5. Pages 10-40 to 10-52 – Suggest including more tables for the parameters analyzed for Alternatives 2 through 5 compared to the No Action Alternative or at least have the tables with data available in an Appendix. Appendix B, Attachment B has graphical outputs of the water model, however tables with data would be much more useful. 8
6. Page 10-41, Table 10-14 – The No Action Alternative flows for all months are not consistent with the No Action Alternative flows in Table 10-3; they should be the same. As a result, this may affect the Alternative 2 difference flows. Also, the title of the table should be labeled “Critical” years, not “Dry” years. 9
7. Page 10-47, third sentence – The sentence is inaccurate. Replace “August and September” with “July and August” so it reads “In July and August of critical water years...” 10
8. Page 10-50, first sentence – The sentence is inaccurate. Delete “both” and “and critical water years,” so instead it reads “In dry water years flow are about the same for all months except for August when flow would be about 10 percent less.” 11

Finally, NMFS requests to be a cooperating agency throughout the National Environmental Policy Act process for Reclamation’s development of the CVP M&I WSP. The Council on Environmental Quality’s (CEQ) regulations implementing NEPA define a cooperating agency as “any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment”. NMFS qualifies for this designation under this definition as the project in question may affect NOAA trust resources. NMFS has jurisdiction under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), the Magnuson Stevens Fishery Conservation and Management Act (16 U.S.C. 1801-1882), and the Fish and Wildlife Coordination Act (16 U.S.C. 661). 12

Please contact Brycen Swart at (916) 930-3712, or via email at Brycen.Swart@noaa.gov, in the California Central Valley Area Office, if you have any questions regarding this letter.

Sincerely,



for

Maria C. Rea
Assistant Regional Administrator

cc: Copy to File - ARN #151422SWR2011SA00585



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

MAR 13 2015

Tim Rust
Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95823

Subject: Draft Environmental Impact Statement for the Central Valley Project Municipal and Industrial Water Shortage Policy, Various Counties, California (CEQ# 20140333)

Dear Mr. Rust:

The Environmental Protection Agency has reviewed the Draft Environmental Impact Statement for the above referenced document. Our review is pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

The Draft EIS evaluates the potential environmental impacts of Reclamation's proposal to implement an update to its 2001 Municipal and Industrial Water Shortage Policy, which defines water shortage terms and conditions and establishes allocations for Central Valley Project M&I water service contractors in severe or continuing droughts. The severity of the current drought and its negative effects on California's ecosystems, economies, and people highlight the need for an M&I Water Shortage Policy that provides clear guidelines for allocation of CVP water. Given the highly variable conditions of each water year and the many needs of the CVP contractors, EPA commends Reclamation for writing a document that clearly articulates the uncertainties inherent in water shortage planning and that discusses environmental impacts in the context of existing conditions, climate change, the regulatory environment, and the many large water infrastructure projects currently in the planning stages in California.

Based on our review, we have rated the Draft EIS and all alternatives as "Lack of Objections" (LO; see enclosed Summary of EPA Rating Definitions). We recommend that the Final EIS include clarifications and an update to help inform the decision making process. Please see the enclosed Detailed Comments.

When the Final EIS is released for public review, please send one hard copy and one CD to the address above (Mail Code: ENF 4-2). If you have any questions, please contact me at 415-972-3521 or contact Stephanie Skophammer, the lead reviewer for this project, at 415-972-3098 or at skophammer.stephanie@epa.gov.

Sincerely,

A handwritten signature in black ink, which appears to read "Kathleen Martyn Goforth", is written over a horizontal line.

Kathleen Martyn Goforth, Manager
Environmental Review Section

Enclosures:
Summary of EPA Rating Definitions
Detailed Comments

WAS 1 3 2012

SUMMARY OF EPA RATING DEFINITIONS*

This rating system was developed as a means to summarize the U.S. Environmental Protection Agency's (EPA) level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the Environmental Impact Statement (EIS).

ENVIRONMENTAL IMPACT OF THE ACTION

"LO" (Lack of Objections)

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

"EC" (Environmental Concerns)

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

"EO" (Environmental Objections)

The EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

"EU" (Environmentally Unsatisfactory)

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

ADEQUACY OF THE IMPACT STATEMENT

"Category 1" (Adequate)

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

"Category 2" (Insufficient Information)

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analysed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

"Category 3" (Inadequate)

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analysed in the draft EIS, which should be analysed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From EPA Manual 1640, Policy and Procedures for the Review of Federal Actions Impacting the Environment

Provide Additional Details Regarding the Project Description

The Draft EIS evaluates four Action Alternatives that represent a range of water shortage sharing conditions for CVP contractors. The Draft EIS indicates that Reclamation will identify a preferred alternative in the Final EIS. Chapter 1 states that possible decision outcomes include pursuing the No Action alternative or approving Alternative 2, 3, 4 or 5 (p. 1-12); however, Chapter 2 indicates that Reclamation is considering the potential “to mix and match elements of the alternatives, if needed, to create an alternative that would reduce environmental impacts and increase environmental benefits” (p. 2-2).

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***Recommendation:** EPA encourages Reclamation to clearly define and describe the selected alternative and its component features in the Final EIS. If the selected alternative is a composite of elements of the alternatives identified in the Draft EIS, evaluate the selected alternative as a discrete alternative in the FEIS (rather than simply referencing the impacts of the individual elements) in order to determine whether the “mixing and matching” of elements would result in impacts that differ in any way from a simple compilation of the impacts of the individual elements.*

Section 1.8 of the Draft EIS indicates that, in addition to supporting decision making among Water Shortage Policy alternatives, “other uses of this document” include taking additional actions to implement the selected policy, including CVP water delivery reductions; applicable CVP long-term contract renewals; and real-time decisions to change upstream flows, Delta outflows, and pumping, consistent with existing CVP operating rules. This section is puzzling because there is no further discussion of these elements in Chapter 2 Description of Alternatives. Long term contract renewals usually require their own NEPA documentation and it is not clear which contract renewals are included in this EIS and how impacts from any such decision were carried through in the NEPA analysis.

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***Recommendation:** Clarify section 1.8 of the EIS and discuss any additional aspects of the project alternatives in Chapter 2.*

In general, the resource descriptions for Alternative 4 (Updated M&I Water Shortage Policy) state that there would be no difference between Alternative 4 and the No Action Alternative (see Table 3-1); however, the description of Alternative 4, beginning on page 2-12, indicates that some proposed changes to the Water Shortage Policy may have potential impacts. For example, one of the proposed actions is to change the water reductions to be based on historical use rather than Contract Totals (p. 2-15). Since no examples are given, it is unclear what impacts, if any, this would have on water supply.

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***Recommendation:** In the Final EIS, evaluate the potential for the proposed methodology change that is proposed in Alternative 4 to have an impact on water supply.*

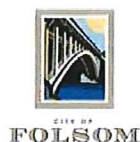
Update the Climate Change Discussion

On December 18, 2014, the Council on Environmental Quality released revised draft guidance for public comment that describes how Federal departments and agencies should consider the effects of greenhouse gas emissions and climate change in their NEPA reviews. The revised draft guidance supersedes the draft greenhouse gas and climate change guidance released by CEQ in February 2010, which is referenced in the DEIS under Regulatory Framework for the Climate Change chapter. This new draft guidance explains that agencies should consider both the potential effects of a proposed action on

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climate change, as indicated by its estimated greenhouse gas emissions, and the implications of climate change for the environmental effects of a proposed action.

***Recommendations:** Update the Regulatory Setting section of the Climate Change chapter to reflect the new CEQ draft guidance released on December 14, 2014.*



March 13, 2015

VIA EMAIL AND U.S. MAIL
(TRUST@USBR.GOV)

Mr. Tim Rust
 Bureau of Reclamation
 2800 Cottage Way
 Sacramento, CA 95825

Dear Mr. Rust:

Together our agencies supply water to hundreds of thousands of people in the American River region. For many years, we have worked with the Bureau of Reclamation on the Central Valley Project Municipal and Industrial Water Shortage Policy (WSP), including attending a series of Reclamation workshops and providing comments on previous drafts of the WSP and Reclamation's 2005 Environmental Assessment for the WSP (2005 EA). We agree with Reclamation that a final WSP will add clarity and certainty to the availability of our region's CVP supplies during shortages in the future. We appreciate and support Reclamation's efforts to finalize the WSP.

The WSP Draft Environmental Impact Statement (DEIS) provides an extensive analysis of the WSP's impacts, but some parts of the DEIS require clarification or additional analysis before Reclamation adopts the Final Environmental Impact Statement (FEIS). Our agencies look forward to continuing to work with Reclamation to develop a FEIS and the final WSP.

Reclamation has not selected a preferred alternative for the final WSP. Because Reclamation's selection of an alternative should involve policy discussions with our agencies and other M&I contractors, our agencies' comments on the DEIS are not the proper forum to discuss selection of the final WSP alternative. Therefore, we request that, prior to issuing the FEIS, Reclamation initiate stakeholder discussions focused on which alternative should be selected.

We look forward to working with Reclamation to develop an FEIS and the final WSP.

COMMENTS ON THE DEIS

A. The FEIS Should Contain Modeling Results Showing Projected CVP Deliveries Under the Five Alternatives

The DEIS and its appendices do not contain modeling results showing projected CVP deliveries to individual municipal and industrial (M&I) contractors under the five alternatives. The closest materials in the documents are charts in the appendices showing modeled contract allocations under the alternatives. (See DEIS, App. B, beginning at pp. B-13.) However, these charts show only contract allocations broken up by North of Delta vs. South of Delta and CVP contract type.

One of our primary interests in the DEIS is to understand how the five alternatives would affect projected CVP deliveries to our agencies. The DEIS does not contain this information. Reclamation's analysis would be greatly improved if the FEIS were to include and analyze these modeling results. The lack of contractor-specific delivery information also makes it very difficult to assess the impact of each alternative as a potential policy option for the final WSP.

B. The FEIS Must Account for the Physical Unavailability of CVP and Non-CVP Water Supplies When Folsom Reservoir Falls to Very Low Storage Levels

The winter of 2013-2014 demonstrated that, under conditions when a WSP's rules about supplies to meet public health and safety (PH&S) needs would become relevant, the physical availability of water may be a key consideration. For example, it is possible that, in such conditions, the physical capacity to divert water through Folsom Reservoir's M&I intake could be reduced or non-existent. That intake would become dry if the reservoir's water level were to decline to about 320 feet above mean sea level (msl), which would be when there is about 100,000 acre-feet (AF) of water stored there. Several of our agencies would begin to have serious water-supply problems at reservoir storage volumes well above 100,000 AF. During the extremely dry winter of 2013-2014, the amount of water stored in the reservoir reached a low of 162,617 acre-feet in storage with a surface elevation of 357 feet msl on February 6, 2014. Based on this real-world experience, the physical availability of any water from Folsom Reservoir is a serious concern in PH&S conditions. The DEIS, however, does not appear to consider the physical availability of water as a possible constraint for either CVP or non-CVP supplies.

Several of our agencies rely on direct diversions of CVP and non-CVP water supplies from Folsom Reservoir's shared municipal intake as a primary water supply source. The DEIS's hydrologic modeling shows that Folsom Reservoir would fall to very low storage levels in some years, which would impair the shared municipal intake's capacity to divert any source of water. (DEIS, App. B, pp. B-43, B-56, B-69.) However, given that the DEIS concludes PH&S needs will be met in all years in the American River Division, the DEIS appears to assume CVP deliveries would continue to be available from Folsom Reservoir in these years. For example, the DEIS's modeling appendix indicates that the lowest M&I allocation north of the Delta would

be 50% of adjusted historical use under the No Action Alternative. (DEIS, App. B, p. B-13, Figure B-4.) The FEIS, however, must account for the fact that physical inaccessibility of water would become a constraint in PH&S conditions and discuss the potential impacts to CVP contractors, including those that divert water directly from Folsom Reservoir. This is particularly crucial for any consideration of Alternative 2, which would impose more shortages on M&I contractors than the Alternative 1/No Action Alternative.

The DEIS also does not appear to account for the potential physical unavailability of non-CVP deliveries in very dry years because the DEIS assumes such supplies would be available when the WSP's PH&S rules would apply. The DEIS appears to assume that non-CVP supplies for all sources, like settlement-contract supplies that must physically be diverted from Folsom Reservoir through the shared municipal intake, will be fully available in very dry years. (See DEIS, pp. 4-23, 4-28, 4-33, 4-36, 4-38 (concluding American River PH&S needs met in nearly all years).) As discussed further in Section E below, it is unclear on what basis the DEIS makes that assumption and further explanation in the FEIS is required.

The DEIS states that, in order to provide higher levels of M&I deliveries in PH&S conditions under Alternative 5, Reclamation must reoperate some project facilities. (DEIS, pp. ES-11, 2-3, 2-16, 2-19.) However, the DEIS's Appendix B indicates that there is little, if any, difference between project operations under Alternative 1, the No Action Alternative, and Alternative 5. (DEIS, App. B, pp. B-29 to B-30.) In other words, the DEIS does not indicate what reoperation might occur and what its impacts might be. The lack of any predicted operational effect suggests that the DEIS does not clearly account for what would occur when project facilities such as Folsom Reservoir experience very dry conditions. This issue should be clarified in the FEIS.

C. The FEIS Must Clarify Several Aspects of the WSP's Historical Use Calculations and Assumptions

The DEIS describes Reclamation's current approach to adjusting an M&I contractor's historical use in unconstrained years for the contractor's use of non-CVP water as part of its description of the Alternative 1/No Action Alternative as follows:

Adjusted for Non-CVP Water. An adjustment to the contractor's historical use quantity to account for water sources other than the CVP supplies used to satisfy M&I demand within the contractor's service area, subject to written documentation from the contractor that shows the extent to which use of the non-CVP water actually reduced the contractor's use of CVP water in other years. A contractor must show that the non-CVP water used in other years reduced the use of CVP water in these years. (DEIS, p. 2-7.)

The description cited above and the rest of the DEIS do not clearly explain how Reclamation would actually conduct the adjustment process. This description also becomes unclear when read with other portions of the DEIS. The DEIS states that Reclamation will only

make an adjustment to an M&I contractor's historical use if the contractor "shows the extent to which use of the non-CVP water actually reduced the contractor's use of CVP water in other years." (DEIS, p. 2-7 (emphasis added).) The DEIS later states that such an adjustment "would be based on documentation showing the extent to which use of the non-CVP water actually reduced the contractor's use of CVP water in the unconstrained historical years." (DEIS, p. 2-13 (emphasis added).) These descriptions of the policy are inconsistent. If the first statement of the policy is the correct one, it is not clear how a M&I contractor could document that its use of non-CVP water in one year reduced its use of CVP water in other years or why such a calculation would necessarily make any difference to the CVP's total supplies. For example, if a CVP contractor diverting water from Folsom Reservoir were to reduce its demand on the CVP by using non-CVP water in one year and then the reservoir were to spill in the subsequent winter, the contractor's use of the non-CVP water in the first year would make more water available to the CVP in that year, but would make no difference in the second year. Therefore, the FEIS should clarify and use examples to further describe how adjustments for use of non-CVP water would work.

The FEIS should also clarify how historical use adjustments differ under DEIS Alternatives 4 and 5. During shortages, DEIS Alternatives 1, 4 and 5 would base CVP allocations on an M&I contractor's historical use. (DEIS, pp. 2-6, 2-15, 2-18.) The DEIS acknowledges that there are differences between Alternative 4 and Alternative 5 in terms of how historical use adjustments would be made. (DEIS, pp. 2-16, 2-18.) However, because the DEIS assumes that, in Alternative 1/No Action Alternative, all M&I contractors would use their full contract amounts under 2030 conditions (DEIS, pp. ES-20 to ES-21, 2-20), it is not possible to tell from the DEIS how the different alternatives' varying historical use adjustments could affect deliveries prior to 2030. Therefore, the FEIS should clarify how implementing the different historical use adjustments under Alternatives 4 and 5 would affect deliveries to M&I contractors.

D. The DEIS Should Not Characterize the American River Division's CVP Supplies as Secondary or Supplemental

Under Alternatives 1, 4 and 5, when an M&I contractor's CVP allocation falls below certain thresholds, the CVP can make additional water available to meet the contractor's unmet PH&S needs. An M&I contractor's PH&S needs would be calculated using a formula that accounts for population, industrial, commercial and institutional demands. (DEIS, p. 2-8.) The DEIS states that, before the CVP will contribute additional water to meet PH&S demands, an M&I contractor must use its reduced CVP allocation and all available non-CVP supplies, such as alternative surface water or groundwater pumping. The DEIS states that contractors' CVP supplies are secondary or supplemental. (DEIS, pp. 2-8, 4-8 fn. 6.)

We disagree with the DEIS's characterization of CVP supplies as secondary or supplemental for M&I contractors in the American River Division. The American River and particularly Folsom Reservoir are the primary water sources for our region. Reclamation exercises essentially complete control over the reservoir's management. There is no other water source that can be the primary source for our region. This is particularly true for the areas within

the Cities of Folsom and Roseville, San Juan Water District, and Sacramento Municipal Utility District's Rancho Seco property that cannot be served economically with pumped groundwater. The DEIS's statements that all CVP supplies must be treated as secondary or supplemental by contractors therefore do not reflect the reality of water supplies in our region. In particular, this characterization must be corrected in relation to Alternative 2, which would reduce CVP M&I allocations relative to current conditions.

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Folsom, Roseville and San Juan previously confirmed with Reclamation the understanding that CVP water-service contract supplies can be primary supplies. In 2012, Folsom, Roseville and San Juan discussed this topic with Reclamation. During these discussions, Reclamation confirmed that it does not consider CVP water-service contract supplies to be a secondary or supplemental source of water. The agencies confirmed this discussion in an October 24, 2012 letter to Mike Finnegan, who then was Reclamation's Central California Area Manager. A copy of that letter is enclosed. The FEIS therefore should correct its mischaracterization of CVP water-service contract supplies as secondary or supplemental and adjust Reclamation's environmental analysis accordingly.

E. The FEIS's PH&S Demands Analysis Must Account for the Unavailability of Non-CVP Supplies in Critical Years

For the American River Division, the DEIS states that all M&I contractors in the division will be able to meet their PH&S needs in critical years by using reduced CVP allocations and non-CVP supplies. (DEIS, pp. 4-21 to 4-23, 4-36 to 4-37.) The DEIS appears to assume that, in critically dry years, all M&I contractors will have access to the full amount of their non-CVP supplies, including groundwater, and that all of those supplies will be available throughout the contractor's service area.

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As noted above, given the known constraints on the physical availability of surface water from Folsom Reservoir, it is unclear why the DEIS assumes that non-CVP supplies would be fully available in critically dry years and further explanation in the FEIS is required. Moreover, groundwater is not equally available throughout the service areas of all American River Division contractors. For example: (1) the City of Roseville can pump groundwater from the western portion of its service area to a portion of the rest of its service area, but not all of it; (2) San Juan Water District can rely on some of its retail suppliers using groundwater, but groundwater cannot be used throughout the District's service area; and (3) the City of Folsom has little ability to serve groundwater in much of its existing service area. Reclamation therefore should reexamine the DEIS's assumptions regarding the wide availability of groundwater within the American River Division. A re-examination of these assumptions is especially needed relative to Alternative 2, which would reduce CVP M&I allocations relative to current conditions.

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Finally, the FEIS must clarify if an M&I contractor may request additional supplies to meet PH&S demands when the full extent of its non-CVP supplies are not available. If so, the process for making that request, and how Reclamation must respond to the request, should be detailed in the FEIS.

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F. The FEIS Must Clarify Reclamation's Approach to Unmet PH&S Demands and Supplies

The DEIS's description of PH&S demands and supplies is different than the treatment of PH&S demands and supplies in the 2005 EA. The DEIS's Alternative 1, the No Action Alternative, describes Reclamation's existing practice as implementation of the 2001 draft WSP, as modified by the 2005 EA. (DEIS, p. 2-4.)

There are, however, at least two differences between the 2005 EA and the policy described in Alternative 1. First, the 2005 EA quantifies a contractor's PH&S need based on a different formula than is used in the DEIS's Alternative 1. (Compare the 2005 EA, pp. 3-8, 4-1, with DEIS, p. 2-8). Second, unlike the 2005 EA, the DEIS indicates that no M&I contractor would have any defined minimum CVP supply. The 2005 EA quantifies an M&I contractor's "public health & safety quantity" that is treated essentially as a minimum level of CVP supply. (2005 EA, p. 3-8 to 3-10, 3-16, 3-18.) The 2005 EA states the following PH&S amounts for our agencies:

- Roseville's PH&S quantity was 24,000 AF (2005 EA, p. 4-21);
- San Juan Water District's PH&S quantity was 18,150 AF (2005 EA, p. 4-22);
- El Dorado Irrigation District's PH&S quantity was 5,663 AF (2005 EA, p. 4-20);
- Placer County Water Agency PH&S quantity was 26,250 AF (2005 EA, p. 4-24);
- Sacramento County Water Agency's PH&S quantity, including the demands of the City of Folsom, was 39,000 AF (2005 EA, p. 4-23); and
- Sacramento Municipal Utility District's PH&S quantity was 22,500 (2005 EA, p. 4-25).

In contrast, the DEIS's Alternative 1 states that Reclamation will only "attempt" to meet a contractor's unmet PH&S need after the contractor uses its non-CVP supplies. (DEIS, pp. 2-5, 2-8 ("M&I water service contractors are expected to first use their non-CVP supplies to meet their PHS demands").)

The FEIS should clarify whether Reclamation will adopt the 2005 EA's handling of PH&S demands and supplies or the DEIS's approach. If Reclamation adopts the DEIS's approach, then the FEIS must also evaluate the impacts to M&I contractors and their communities of implementing Reclamation's change from the 2005 EA's calculation of PH&S supplies.

G. The FEIS Must Analyze the Impact of Unmet PH&S Demands in Light of the Potential Non-Availability of CVP and Non-CVP Water Supplies

Under Alternatives 1 and 4, the CVP would only contribute additional water for PH&S demands to the extent those demands do not exceed 75% of the contractor's adjusted historical use. (DEIS, pp. 2-6, 2-15.) Under Alternative 5, the percentage would be 95%. (DEIS, p. 2-16.)

As discussed above, the DEIS appears not to account for the limited physical availability of non-CVP supplies. Therefore there is the potential that some M&I contractors' PH&S demands will not be met under the WSP. If the availability of CVP and non-CVP supplies were to be so low that PH&S demands would not be met, it would likely result in the loss of significant amounts of landscaping, damage to community amenities like parks, numerous business closures, impairment of power generation and electrical grid management, and possible population migration away from the affected communities. The FEIS should analyze the resulting potential impacts to socioeconomics, recreation and visual resources for M&I contractors. This analysis is particularly necessary for Alternative 2, which would reduce CVP M&I allocations relative to current conditions.

Finally, although the DEIS and WSP do not state that outdoor commercial irrigation is excluded from the calculation of PH&S needs, it appears that the PH&S calculations in Appendix A for several American River Division contractors have excluded outdoor commercial irrigation. The FEIS should clarify this point so its analysis can treat all M&I contractors' outdoor commercial irrigation demands consistently in PH&S conditions. The FEIS also should evaluate the socioeconomic and visual impacts of not delivering CVP water to meet those demands.

H. The FEIS Should Not Include EBMUD in the Analysis of Supplies and Demands of, and Impacts to, the American River Division

Because East Bay Municipal Utility District's (EBMUD) CVP contract is grouped with the American River Division, the DEIS treats EBMUD as part of the division for environmental analysis purposes. However, EBMUD has a separate water system on the Mokelumne River that is the primary water supply for its service area. CVP supplies are only available to EBMUD under its CVP contract when storage in EBMUD's own reservoirs is projected to be below 500,000 AF. (2005 EA, p. 4-26.) Other American River Division contractors – such as the Cities of Folsom and Roseville and San Juan Water District – are primarily dependent on American River water supplies and do not have access to sufficient other water supplies to meet their demands. EBMUD's Mokelumne River supplies clearly are not available throughout the American River Division.

The DEIS's discussion of the water supplies available to the American River Division contractors, their levels of demand and the extent to which their PH&S needs can be met is skewed because that discussion includes the supplies and demands of EBMUD. (See DEIS, pp.

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4-11 to 4-13.) The incorrect impression given by this discussion appears throughout the DEIS where the DEIS states, without qualification, that PH&S demands will be met throughout the American River Division. (See DEIS, p. 4-23.) Therefore, the FEIS's discussion of American River Division supplies and demands should be revised from the DEIS to separate EBMUD's supplies and demands from the supplies and demands of M&I contractors that are located adjacent to or near the American River. This revision is particularly necessary for Alternative 2, which would reduce CVP M&I allocations relative to current conditions.

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I. The FEIS Should Clarify that Alternative 1, the No Action Alternative, Is Based in Part on Unsupported Assumptions in the 2005 EA, and, Therefore, Reclamation Cannot Implement Alternative 1

The DEIS states that Reclamation is deciding which of the five alternatives to implement. (DEIS, p. 1-12.) Alternative 1, the No Action Alternative, would continue use the 2001 Draft M&I WSP, as amended by the 2005 EA. As the DEIS admits, however, the 2005 EA made unsupported assumptions about how the WSP would apply to M&I contractors within the American River Division:

The alternatives analysis in the EA was based on several assumptions. One assumption was that the American River Division M&I water service contractors would not participate in the M&I WSP because water supplies under drought conditions would be provided under a separate agreement between water users of the American River water supply, called the Water Forum Agreement. [...] Following publication of the Final EA in 2005, Reclamation received additional comments from several CVP water service contractors. The contractors indicated that the Water Forum Agreement was not being implemented as described in environmental document; therefore, the American River Division assumptions in the EA were no longer valid.

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(DEIS, p. 1-7.)

The FEIS therefore should correct the description of Alternative 1, state that Reclamation will not implement Alternative 1 and revise its analysis of the DEIS's action alternatives accordingly.

J. The FEIS Should Address Issues with the DEIS's Groundwater Analysis

Several issues with the DEIS's groundwater analysis should be corrected in the FEIS. These corrections are particularly necessary for the DEIS's analysis of Alternative 2, which would result in reduced CVP M&I deliveries relative to current conditions.

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The DEIS states that groundwater accounts for less than 30 percent of the annual supply for agricultural and urban purposes in the Sacramento Valley. This statement obscures

significant differences in the reliance on groundwater between those two types of water uses. (DEIS, p. 6-14.) The FEIS should clarify that urban agencies in the Sacramento Valley may rely on groundwater more heavily.

The DEIS also states that it uses a “conservative assumption” that “M&I water service contractors [would] choose to meet all the unmet PH&S need by temporarily increasing the use of groundwater.” (DEIS, p. 6-56.) This assumption is inappropriate for several reasons.

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As discussed above, multiple M&I contractors in the American River Division have little or no groundwater available to them as alternative supplies. The DEIS’s apparent assumption that groundwater would be freely available to meet M&I contractors’ unmet PH&S demands therefore is not supportable. (See DEIS, p. 6-57.)

The DEIS’s assumption that M&I contractors would only pump additional groundwater to meet PH&S demands also is incorrect. (DEIS, p. 6-62.) To the extent that implementation of the WSP would result in CVP supplies being inadequate in wetter years, at least some M&I contractors probably would pump additional groundwater where it is available in those years as well. The error in the DEIS’s assumption about M&I groundwater pumping is demonstrated by its assumption that agricultural contractors would respond to implementation of a full M&I preference under Alternative 3 by pumping more groundwater in many years. (DEIS, p. 6-67.) The DEIS does not explain why it assumes that M&I contractors would pump less often in response to water-supply shortages.

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The FEIS’s groundwater analysis should be expanded to include more than impacts on land subsidence and some water quality issues. (See DEIS, p. 6-58.) The DEIS does not address, for example, potential migration of contaminant plumes that could occur if CVP deliveries to M&I contractors were reduced or were insufficient to meet demands. There are at least two well-known contaminant plumes in the Sacramento metropolitan area – originating from Aerojet property south of the American River and from the former McClellan Air Base north of that river – that could migrate if increased groundwater pumping were to occur in that area as assumed by the DEIS. The FEIS should address the potential migration of these plumes as a result of the WSP’s implementation.

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K. The FEIS Should Correct Issues with the DEIS’s Cumulative Impacts Analysis

The DEIS’s conclusion that implementation of Bay-Delta Conservation Plan (BDCP) Alternative 4 would not result in any reductions in CVP deliveries to M&I contractors obscures the serious impacts to water supplies from Folsom Reservoir that BDCP projects to occur by 2060 as a result of the continued implementation of Delta water quality requirements with climate change. (DEIS, p. 4-40.) As discussed in the comments on the draft BDCP EIR/EIS by

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the North State Water Alliance and the American River Water Agencies,¹ these projections are not reliable and, if implemented, would violate numerous contracts and water rights. For example, the City of Folsom and San Juan Water District's supplies under their contracts with Reclamation that reflect their American River water rights from the 1850s would not be available if Folsom Reservoir were to be drained as projected in the BDCP EIR/EIS. The current DEIS may not rely on the draft BDCP EIR/EIS to reliably analyze what water-supply impacts would occur with the combined implementation of Reclamation's draft M&I shortage policy and BDCP.

Similarly, the DEIS's statement that implementation of Alternative 2 with cumulative projects such as BDCP and the SWRCB's draft San Joaquin River water quality control plan amendments will not have an adverse cumulative effect "given the plan's limited effect on Delta exports" seems to indicate that Reclamation has limited the scope of its analysis on this point to M&I contractors that receive Delta exports. (DEIS, p. 4-41.) The FEIS should correct this statement because such a limitation would be inappropriate given the numerous M&I contractors located upstream of the Delta.

L. Additional Issues That Should be Fixed or Clarified in the FEIS

In addition to the comments in the sections above, a number of additional issues with the DEIS should be fixed or clarified in the FEIS. These additional issues are as follows, in the order in which they appear in the DEIS:

- The DEIS is inconsistent as to what years are included in the DEIS's historical use modeling for the American River division. (Compare DEIS, p. 2-7 and p. 4-11.) This inconsistency should be clarified.
- The FEIS should fix the DEIS's incorrect suggestion that the State Water Resources Control Board's (SWRCB) approval is necessary for changes to the use of pre-1914 appropriative water rights. (DEIS, p. 4-4.) The SWRCB's approval is not necessary for changes to such rights. (Water Code § 1706.)
- Contrary to its description, Figure 4-2 on the DEIS's page 4-7 depicts Delta Division contractors, rather than Shasta and Trinity River Division contractors.
- Figure 4-6 shows M&I contractors in the American River Division, but does not include the City of Folsom. (DEIS, p. 4-12.) The City should be included because it contracts for CVP water-service supplies through a subcontract with SCWA. The CVP water-service contract between Reclamation and SCWA recognizes that the City would obtain water under that contract. (Contract 6-07-20-W1372, pp. 3:20-4:4, 5:4-9, 7:10-13, 15:2-10, Exh. B-2.) Similarly, a

¹ These letters are available at <http://goo.gl/0uFfXa> and <http://goo.gl/0djHBE>, respectively.

calculated PH&S demand amount for the City has been incorrectly omitted from the contractor data in Appendix A, and the City's PH&S demands do not appear to be included in SCWA's demand amount. (See DEIS, App. A, p. A-1.)

- The total American River Division contract and use numbers included in Figure 4-7 on DEIS page 4-12 do not match the total American River Division contract and use numbers in Appendix A. (See DEIS, App. A, p. A-1.) The FEIS should correct the discrepancy and its analysis should be adjusted accordingly. 28
- The DEIS's description of American River Division contractors' non-CVP supplies on page 4-28 do not match the total of those supplies stated in the DEIS's Appendix A. (See DEIS, App. A, p. A-1.) The FEIS should correct the discrepancy and its analysis adjusted accordingly. 29
- The DEIS states Alternative 2 is modeled to produce higher flows in the lower American River. (DEIS, p. 4-29.) The FEIS should explain why these higher flows are projected to occur, and when flows would increase. 30
- The DEIS incorrectly characterizes what water CVP contractors may transfer under the CVPIA. (See DEIS, p. 6-3.) In particular, the DEIS states that, under Central Valley Project Improvement Act (CVPIA) section 3405, "Transfer will be limited to water that would be consumptively used or irretrievably lost to beneficial use." (DEIS, p. 6-3.) This description of CVPIA section 3405 is incorrect for CVP contractors in the CVP's area of origin. CVPIA section 3405(a)(1)(M) states that the otherwise applicable requirement that a transfer be limited to consumptive use or irretrievable loss under section 3405(a)(1)(I) "shall be deemed" to be met for "[t]ransfers between Central Valley Project contractors within counties, watersheds, or other areas of origin, as those terms are utilized under California law." For transfers among such contractors, section 3405(a)(1)(M) also deems to be met section 3405(a)(1)(A)'s otherwise applicable requirement that a transfer be limited to "the average annual quantity of water under contract actually delivered to the contracting district or agency during the last three years of normal water delivery prior to the date of enactment of this part." The FEIS should contain language that correctly characterizes CVPIA's conditions for transfers of CVP supplies among contractors in the area of origin. 31
- The City of Roseville is operating under its third interim CVP water-service renewal contract, but the contract number stated for the City in Appendix A ends in "IR-1," indicating a first renewal contract. (See DEIS, App. A, p. A-1.) The FEIS should correct this error. 32
- The DEIS's Appendix B contains an error in the reservoir storage level data for Folsom Reservoir. (DEIS, App. B, p. B-15, Table B-3.) It appears that the lines for some of the reservoirs listed in Table B-3 may be transposed. 33

CONCLUSION

Once again, our agencies appreciate Reclamation's efforts to finalize the WSP. Because we understand that Reclamation intends to finalize the WSP by the end of this year, we reiterate our request that Reclamation initiate stakeholder discussions on the selection of the final WSP alternative as soon as reasonably possible. We appreciate your attention to these comments and look forward to further discussions with Reclamation regarding the DEIS and the WSP alternative that Reclamation will select in the FEIS.

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CITY OF FOLSOM

By: Marcus Yasutake
Marcus Yasutake
Environmental &
Water Resources Director

CITY OF ROSEVILLE

By: Richard D. Plecker
Richard Plecker
Director, Environmental Utilities

EL DORADO IRRIGATION DISTRICT

By: Jim Abercrombie
Jim Abercrombie
General Manager

PLACER COUNTY WATER AGENCY

By: Einar Maisch
Einar Maisch
General Manager

SACRAMENTO COUNTY WATER AGENCY

By: Michael L. Peterson
Michael Peterson
Director of Water Resources

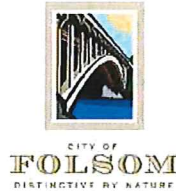
SACRAMENTO MUNICIPAL UTILITY DISTRICT

By: Steve Sorey
Steve Sorey
Director, Energy Trading and Contracts

SAN JUAN WATER DISTRICT

By: Shauna Lorance
Shauna Lorance
General Manager

Enclosure



October 24, 2012

Michael R. Finnegan, Area Manager
Central California Area Office
7794 Folsom Dam Road
Folsom CA 95630-1799

Dear Mr. Finnegan:

The San Juan Water District and the Cities of Roseville and Folsom appreciate our discussions to clarify Reclamation's position concerning the use of Central Valley Project (CVP) water supplies as a primary or supplemental water supply, and the related use of non-CVP water in determining historic use when calculating shortage allocations of CVP water under Reclamation's draft municipal and industrial (M&I) shortage policy. This discussion derived from concerns expressed to the Central California Area Office (CCAO) by our three agencies and other CVP M&I Contractors based on various drafts of the Reclamation's M&I shortage policy.

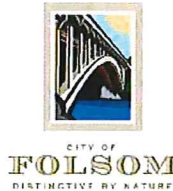
The following summarizes our discussions at the August 24, 2012 meeting to clarify (1) Reclamation's recognition that CVP water supplies may be a Contractor's primary water source, and (2) Reclamation's proposed method of determining adjusted historical use under its draft M&I shortage policy. In this letter, the terms "CVP water" or "CVP water supplies" refer to water delivered to a CVP M&I Contractor under its water-service contract with Reclamation and the terms "non-CVP water" or "non-CVP water supplies" refer to all other water supplies, including those delivered under other types of contracts between such a Contractor and Reclamation.

CVP SUPPLEMENTAL WATER SUPPLY

M&I Contractors have expressed concerns to the CCAO regarding the calculation of adjustments to an M&I Contractor's historic use of CVP water to account for the Contractor's use of non-CVP water to satisfy M&I demand within the Contractor's service area. At the CVP M&I Water Shortage Policy Review Stakeholder Workshop #7 on June 4, 2012, Reclamation staff expressed that Reclamation considers CVP water supplies to be "supplemental to non-CVP water supplies" except in the cases where CVP water provides the sole supply to the particular Contractor.

However, to clarify Reclamation's message expressed at the June 4th meeting as described above, Reclamation does not prioritize an M&I Contractor's CVP water and non-CVP water supplies in this manner.

It is worth noting that, in some cases, a M&I Contractor's non-CVP water supplies come from the same physical source as its CVP water supplies. In such cases, the ability of both CVP and non-CVP supplies to provide water to the Contractor will also be limited because of physical, weather or other variables that would impact storage in the federal facilities.



DETERMINATION OF SHORTAGE ALLOCATION/HISTORIC USE OF CVP WATER SUPPLY

Similarly, M&I Contractors expressed concerns to the CCAO regarding the determination of adjusted historic use in calculating shortage allocations of CVP water to those Contractors as result of the June 4, 2012 CVP M&I workshop. The following summarizes our discussions to clarify the determination of CVP water shortage allocations:

NORMAL YEARS

The draft M&I shortage policy bases the initial determination of an M&I Contractor's historic use on the average of the previous 3 years of CVP water deliveries that were unconstrained by the availability of CVP water. Reclamation recognizes that some CVP M&I Contractors have secured supplemental non-CVP water supplies rather than using the full volume allowed in their CVP water supplies. In these cases, the Contractor is responsible for notifying Reclamation when the Contractor uses non-CVP water to satisfy M&I demand within the Contractor's service area. That use of non-CVP water is subject to written documentation from the Contractor that shows the extent to which use of the non-CVP water actually offset and reduced the Contractor's use of CVP water.

Using Figure 1, Example for Normal Years, during the reporting process for normal years, the following would be typical steps that occur:

- (a) Reclamation would provide the Contractor with the historic use of CVP water. In the example shown in the figure, this amount would be 3,000 acre-feet (afa).
- (b) Contractor responds to Reclamation by documenting the use of non-CVP water (7,000 afa in this example) to offset its CVP water supply.
- (c) Reclamation receives response, validates the Contractor's use of non-CVP water, and adjusts the Contractor's historic use of CVP water (to 10,000 afa).





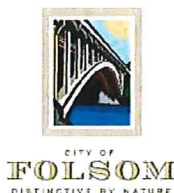
NORMAL YEARS		
CVP Contract		10 AFA
Actual CVP Contract Used		3 AFA
Non-Project Water Used		7 AFA
HISTORICAL USE =		10 AFA

Figure 1, Example for Normal Years

SHORTAGE YEARS

During M&I shortage years, Reclamation determines an M&I Contractor's shortage allocations based on the Contractor's three year adjusted historic use average as determined in the most recent unconstrained years. In the example shown in Figure 2, *Example for 75% Shortage Allocations*, Reclamation would determine the shortage allocation based on the actual amount of CVP water delivered to the Contractor, as adjusted for its average use of non-CVP water in the relevant years. This example is based on the Contractor's average historic use of CVP water of 4 afa and its average non-



CVP historic use of 6 afa. The Contractor's shortage allocation would be based on the full amount of its CVP water as stated in its CVP water contract.

75% YEARS

CVP Contract		10 AFA	}	Avg CVP Historic Use = 4 AFA 75% Allocation = 0.75 * 4 = 3 AFA
Actual CVP Used: Year 1		3 AFA		
Actual CVP Used: Year 2		5 AFA		
Actual CVP Used: Year 3		4 AFA	}	Contractor Uses available Non-CVP Water Supply to Meet Shortage Year Demands
Actual Non-CVP: Year 1		7 AFA		
Actual Non-CVP: Year 2		5 AFA		
Actual Non-CVP: Year 3		6 AFA		
NOTE: Contractor must notify USBR of use of Non-CVP Supplies				
AVG. HISTORICAL USE =		10 AFA		

This Contractor's adjusted historic use of CVP water would be subject to written documentation from the Contractor that shows the extent to which its use of the non-CVP water actually reduced its use of CVP water in the preceding three unconstrained years. A Contractor must show that some portion of the non-CVP water supply was delivered to, or diverted or pumped by, the Contractor prior to the Contractor identifying that supply as the basis for an adjustment of the Contractor's historic use of CVP water for purposes of Reclamation's M&I shortage policy.

Additionally, Reclamation recognizes that certain additional circumstances may require adjustment of the historic use of CVP water, such as growth or extraordinary water conservation measures. Reclamation also recognizes that, in some cases, a Contractor's non-CVP supplies come from the same physical source as their CVP water supplies. If the amount of water available to that source is limited, the ability of that source to provide both CVP and non-CVP water to the Contractor will also be limited by the physical storage constraints, weather, or other related variables.

Reclamation understands that CVP M&I Contractors participating in Reclamation's M&I shortage policy workshops disagree with the method for calculating unmet need (unmet need is calculated as the public health and safety [PH&S] levels less non-CVP water supplies). The M&I Contractors believe that this method creates a disincentive to develop or use non-CVP water supplies because using these alternative supplies would lower a Contractor's historic use of CVP water and potentially reduce the future expected deliveries from the CVP in shortage years.

Sincerely,
CITY OF FOLSOM

CITY OF ROSEVILLE

SAN JUAN WATER
DISTRICT

Kenneth V. Payne

Derrick Whitehead

Shauna Lorange



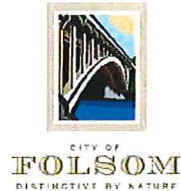
Director of Environmental
and Water Resources



Director of Environmental
Utilities



General Manager



Copy:

Drew Lessard, Deputy Area Manager
Central California Area Office
7794 Folsom Dam Road
Folsom CA 95630-1799

Ron Milligan, Operations Manager
Central Valley Operations Office
3310 El Camino Avenue, Suite 300
Sacramento CA 95821

Richard Stevenson
Central Valley Operations Office
3310 El Camino Avenue, Suite 300
Sacramento CA 95821



LA02

RUST, TIMOTHY <trust@usbr.gov>

M&I Shortage Policy

1 message

Kriz, Ed <ekriz@roseville.ca.us>

Mon, Dec 8, 2014 at 3:50 PM

To: "Trust@usbr.gov" <Trust@usbr.gov>

Cc: "Mulligan, Jim" <JMulligan@roseville.ca.us>, "Andrew Ramos (AJR@bkslawfirm.com)" <AJR@bkslawfirm.com>

Tim and Team,

Thanks for the meeting this afternoon and the information on the EIS project. As you know, the current deadline for comments is January 12th, 2015. While I appreciate the desire to move this effort forward and get it completed the requested review schedule is quite constrained and bridges both Thanksgiving and Christmas/New Year holidays. I am requesting an extension to February 20th for agencies to have time for a more thorough review.

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Thank you for this consideration.

Ed Kriz
Director
Environmental Utilities
City of Roseville
2005 Hilltop Circle
Roseville, CA 95747
(916) 774-5714
www.roseville.ca.us





Municipal and Industrial Water Shortage Policy Draft EIS Public Meeting Comment Sheet



There are several options to provide written comments. You can provide your written comments by turning in this form at the public meeting. You may also e-mail your comments directly to trust@usbr.gov with the subject line "Municipal and Industrial Water Shortage Policy" or mail this form to the Bureau of Reclamation (mailing address is on the back of this card). Whatever method you choose, please note that all written comments must be received no later than 5:00 p.m. (Pacific Standard Time) on **Monday January 12, 2015**.

PLEASE PRINT CLEARLY. PLEASE NOTE THAT ALL COMMENTS BECOME PART OF THE PUBLIC RECORD.

Name: _____

Jim Mulligan

Organization (If applicable): _____

City of Roseville

Address: _____

2005 Hilltop Circle, Roseville, CA 95747

Phone: _____

916) 774 5148

Fax: () _____

Email: _____

jmulligan@roseville.ca.us

Date: _____

12/8/14

Comment: _____

① Please extend the comment period beyond January 12, 2015 so the holidays don't impact public comment response.

1

② Please integrate the EIS schedule with the COA re-negotiation process as changes to the COA that balance and benefit the CVP would potentially change the EIS alternatives analysis. It seems hasty to finalize an M&I shortage policy based on a flawed COA.

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March 13, 2015

VIA EMAIL AND U.S. MAIL
(TRUST@USBR.GOV)

Mr. Tim Rust
Bureau of Reclamation
2800 Cottage Way, MP-410
Sacramento, California 95825

Re: Draft Environmental Impact Statement for CVP Municipal and Industrial
Water Shortage Policy – Comments of the City of Roseville and San Juan
Water District

Dear Mr. Rust:

This letter provides comments on the draft environmental impact statement (DEIS) for the Central Valley Project (CVP) Municipal and Industrial Water Shortage Policy (Shortage Policy) specifically from the City of Roseville and San Juan Water District. This letter focuses on an issue relatively unique to the City and the District, namely the effect of a term in the Bureau of Reclamation's water-right permits for Folsom Dam and Reservoir – Term 14 – on CVP water-service contract allocations from water in that reservoir.

Before providing these comments, we would like to express our appreciation for Reclamation's efforts to manage the limited water supplies that have been available to it at Folsom Reservoir during the on-going drought. As you know, the City and the District depend on diversions directly from the reservoir as our primary water supplies. To preserve those supplies, Reclamation has taken significant steps to preserve water stored in the reservoir. We particularly appreciate that Reclamation's projected operations for 2015 would maintain storage in the reservoir at, if not comfortable levels, at least levels would remain above our water-supply intake this year.

It is important to our agencies that Reclamation complete a Shortage Policy that states how Reclamation will allocate water to CVP municipal and industrial water-service contractors in drier years. Reclamation has been developing a Shortage Policy for many years and we commend your efforts to complete it. Our agencies stand ready to work with Reclamation to make the Shortage Policy and the environmental impact statement for it as good as they can be.

In that vein, we would like to identify, as relevant to Reclamation's consideration of the DEIS and a final Shortage Policy, a point on which we disagree with Reclamation. As you

Mr. Tim Rust
March 13, 2015
Page 2

probably are aware, our agencies and others have exchanged with Reclamation several letters concerning Term 14 and the obligations to our agencies that Reclamation accepted in its water-right permits for Folsom Dam and Reservoir. Those letters and their attachments are enclosed with this letter. As they discuss in more detail, Term 14 states, subject to some conditions, that Reclamation will ensure that the "present and prospective" needs of qualifying contractors in Placer, Sacramento and San Joaquin Counties are "fully met" from water that Reclamation diverts under its water-right permits for Folsom Dam and Reservoir. The water-right decision that granted those permits to Reclamation, Decision 893, stated that those permits would allow Reclamation to "adequately supply" communities "naturally dependent" on the American River. As our previous letters have discussed, based on Term 14's language and Decision 893, we believe that Reclamation must prioritize CVP water-service contract deliveries from Folsom Reservoir to our agencies and other agencies whose water-service contracts are protected by Term 14. The DEIS identifies our concerns about Term 14 as an issue of known controversy, but does not indicate that allocating water according to that water-right permit term is part of the Shortage Policy's purpose and need. The DEIS also does not contain a project alternative that would involve such an allocation. We therefore believe that the DEIS and its Shortage Policy alternatives are inconsistent with Reclamation's water-right permits for Folsom Dam and Reservoir and the laws that apply to the DEIS and the Shortage Policy.

We provide these comments in hopes of advancing the Shortage Policy to a successful resolution. We know that Reclamation is facing difficult questions during the continuing drought and appreciate your efforts that have improved our water-supply reliability. If you have any questions about this letter, please do not hesitate to contact Rich Plecker, the City's Environmental Utilities Director, at rplecker@roseville.ca.us or Shauna Lorange, the District's General Manager, at slorange@sjwd.org.


Very truly yours,

CITY OF ROSEVILLE

SAN JUAN WATER DISTRICT

By: 

Carol Garcia
Mayor

By: 

Edward J. Costa
President

Enclosures

Letter to Mr. Tim Rust, dated January 27, 2012
Letter to Mr. Tim Rust, dated March 14, 2012
Letter to Mr. Rick Woodley, dated June 25, 2012
Letter to Mr. David Murillo, dated May 3, 2013
Letter to Mr. Mike Kashiwagi, dated June 7, 2013
Letter to Mr. Tom Howard, dated March 10, 2014
Letter to Mr. Tom Howard, dated April 25, 2014
Letter to Mr. Michael Buckman, dated May 13, 2014

Enclosure 1
Letter to Mr. Tim Rust, dated January 27, 2012



January 27, 2012

Mr. Tim Rust
U.S. Department of the Interior
Bureau of Reclamation, Mid-Pacific Region
2800 Cottage Way
Sacramento, California 95825

Re: Central Valley Project M&I Water Shortage Policy – Deliveries to
American River Division and Reclamation Water-Right Permits

Dear Mr. Rust:

We have appreciated the Bureau of Reclamation's openness to comments and participation by CVP contractors like our agencies during Reclamation's process for finalizing its 2001 draft M&I Water Shortage Policy. As American River Division contractors, however, we continue to have significant concerns about the 2005 environmental assessment (EA) that Reclamation prepared for the 2001 draft policy because Reclamation's March 8, 2011 notice of intent to prepare an environmental impact statement (NOI) states:

The 2001 M&I WSP was modified by, and is being implemented in accordance with, Alternative 1B in the 2005 EA.

As you know, the 2005 EA stated that it will not always be feasible to provide public health and safety levels of CVP supplies to American River Division water-service contractors because our Division includes no CVP agricultural contractors from whom water could be reallocated to provide such levels of supplies. (2005 EA, pp. 3-2, 4-53.) This issue was discussed at length during Reclamation's 2010 workshops concerning the finalization of the 2001 draft M&I Water Shortage Policy. Reclamation's 2011 NOI, however, does not clarify how Reclamation intends to address that issue in defining its proposed project and alternatives in the draft environmental impact statement (DEIS) that it is now preparing.

Our agencies believe that, in preparing the DEIS, Reclamation should not continue the 2005 EA's approach concerning deliveries to the American River Division. Reclamation delivers American River water to agricultural contractors south of the Delta, so such contractors do receive supplies from the same source as the American River Division. The 2005 EA's approach would be inconsistent with not only Reclamation's historical practices, but also with Term 14 in the water-right permits under which Reclamation diverts water at Folsom Dam and Reservoir, specifically Permits Nos. 11315 and 11316. That Term 14, as included in those Reclamation permits by the State Water Rights Board in its Decision 893, states:

Deliveries of water under permits issued pursuant to Application 13370 and 13371 [Permits Nos. 11315 and 11316] shall be limited to deliveries for beneficial use within Placer, Sacramento and San Joaquin Counties and shall not be made beyond the westerly or southerly boundaries thereof, except on a temporary basis, until the needs of those counties, present or prospective, are fully met provided, however, that agreements in accordance with Federal Reclamation laws between permittee and parties desiring such service within said counties are executed by July 1, 1968.

(Decision 893, p. 72; see also *State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 814 (discussing Term 14).)

Reclamation has signed agreements extending Term 14's July 1, 1968 deadline to December 31, 1975. (State Water Resources Control Board [SWRCB] Decision 1356, pp. 7-8; SWRCB Decision Amending and Affirming, As Amended, Decision 1356, pp. 6-7 (December 17, 1970).) A number of American River Division CVP water-service contracts were signed before the 1975 deadline, including the contracts of the City of Roseville, Placer County Water Agency, Sacramento Municipal Utility District and San Juan Water District. The 2005 EA's approach toward deliveries to the American River Division therefore would not be consistent with Reclamation's water-right permits and should not be continued in the DEIS on which Reclamation is currently working.

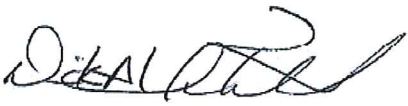
We have appreciated Reclamation's willingness to discuss at some length the problems raised by its 2005 EA's statements about deliveries to American River Division contractors. We believe that we collectively made progress on this issue during Reclamation's 2010 workshops and want to ensure that the DEIS reflects this progress. Accordingly, we would be happy to discuss with you further how Reclamation plans to handle deliveries to the American River Division in accordance with Term 14 in its DEIS.

Mr. Tim Rust
January 27, 2012
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Please do not hesitate to contact us if you have any questions.

Very truly yours,


CITY OF ROSEVILLE

By: 
Derrick Whitehead
Environmental Utilities Director


PLACER COUNTY WATER AGENCY

By: 
David Breninger
General Manager

SAN JUAN WATER DISTRICT

By: 
Shauna Lorange
General Manager

SACRAMENTO MUNICIPAL UTILITY
DISTRICT

By: 
John DiStasio
General Manager and Chief
Executive Officer

8683/M &I Shortage Policy/L012712AmRiver Divn

Cc: Tammy Laframboise, Bureau of Reclamation
Mike Finnegan, Bureau of Reclamation
Bureau of Reclamation CVP M&I Water Shortage Policy Staff
CVP M&I Water Shortage Policy Stakeholder Group

Enclosure 2
Letter to Mr. Tim Rust, dated March 14, 2012



March 14, 2012

Mr. Tim Rust
U.S. Department of Interior
Bureau of Reclamation, Mid-Pacific Region
2800 Cottage Way
Sacramento, California 95825

Re: Central Valley Project M&I Water Shortage Policy – Draft EIS
and Term 14 of Folsom Unit's Water-Right Permits

Dear Mr. Rust:

As our agencies stated at the February 10, 2012 workshop concerning Reclamation's possible approach for preparing a draft environmental impact statement (EIS) for the CVP M&I water shortage policy, our agencies believe that Reclamation's EIS must reflect compliance with Reclamation's water-right permits for the CVP's Folsom Unit. At that workshop, you briefly stated an interpretation of Term 14 in those permits, which are Permits Nos. 11315 and 11316. For the reasons stated in this letter, our agencies disagree with that interpretation. Reclamation's EIS must reflect the contractual allocations to our agencies required by Term 14 in those water-right permits.

1. Term 14 of Folsom Unit Permits And Reclamation's Apparent Interpretation Of It

Term 14 in Permits Nos. 11315 and 11316 states:

Deliveries of water under permits issued pursuant to Application 13370 and 13371 shall be limited to deliveries for beneficial use within Placer, Sacramento and San Joaquin Counties and shall not be made beyond the westerly or southerly boundaries thereof, except on a temporary basis, until the needs of those counties, present or prospective, are fully met provided, however, that agreements in accordance with Federal Reclamation laws between permittee and parties desiring such service within said counties are executed by July 1, 1968.

The 1968 deadline was extended to December 31, 1975 under agreements signed by Reclamation. (Decision 1356, pp. 7-8; Decision Amending And Affirming As Amended, Decision 1356, p. 1 (1970).)

Our agencies are within the counties to which Term 14 applies and signed our CVP water-service contracts before Term 14's 1975 deadline. At the February 10, 2012 workshop, however, you stated an interpretation of Term 14 under which its only effect was to allow agencies like ours to sign such contracts before other agencies and now does not affect Reclamation's allocations of water diverted and stored in the CVP's Folsom Unit. As explained below, such an interpretation would defeat the purpose of Term 14, as stated in the water-right decision – Decision 893 – that approved the Folsom Unit's permits and adopted Term 14. Reclamation's EIS must incorporate an interpretation of Term 14 that reflects that purpose, as recognized by the State Water Resources Control Board (SWRCB) and, more recently, the California Court of Appeal.

2. *Decision 893 And The Court of Appeal's Last Delta Decision Explain That Term 14 Is A Substitute For Granting Local Agencies Their Own Water-Right Permits*

Decision 893 concerned not just Reclamation's applications for the Folsom Unit's permits, but also numerous applications by local agencies to appropriate water from the American River. Those agencies included, among others, the City of Roseville and districts serving areas to which San Juan Water District now provides wholesale water supplies (Citrus Heights and Fair Oaks). (Decision 893, p. 53.) In Decision 893, the State Water Rights Board did not grant the applications by agencies to serve areas near Folsom Reservoir, but instead stated:

The points or points of diversion under each of those applications is Folsom Dam and/or Nimbus Dam to which right of access has not been acquired by the applicants. Accordingly, issuance of permits to those applicants would be meaningless in view of the obvious necessity of contracting with the United States for a supply of water from the Federal facilities. The service areas which those applicants desire to supply may be supplied equally well and with less administrative confusion by contract with the United States. Permits are being issued to the United States to appropriate enough American River water to adequately supply the applicants naturally dependent on that source and availability of water to such applicants is reasonably assured by the terms to be contained in the permits to be issued to the United States restricting exportation of water under those permits insofar as exportation interferes [*sic*] with fulfillment of needs within Placer, Sacramento and San Joaquin Counties. Other applicants in more remote areas must if necessary seek water from other sources.

(Decision 893, p. 54.)

Accordingly, the State Water Rights Board inserted Term 14 in Reclamation's Folsom Unit permits in order to grant agencies along the American River rights to water substantially similar to their own water-right permits while also reducing the "administrative confusion" that would have been associated with granting those permits. Such permits would have provided local agencies firm water supplies subject only to senior water rights and the conditions of the permits themselves.

Reclamation's apparent interpretation of Term 14, however, would allow Reclamation to allocate American River water to agencies within the counties covered by that term on the same basis as all other CVP water-service contractors. Such an interpretation would conflict with Term 14's explicit protection of the relevant counties' ability to obtain supplies to serve their "present or prospective" needs. Such an interpretation also would conflict with the State Water Rights Board's stated rationale for adopting Term 14 and would – contrary to that Board's intent – cause the exportation of water appropriated by the CVP's Folsom Unit to interfere with "fulfillment of needs within Placer, Sacramento and San Joaquin Counties."

Such an interpretation would conflict with not only Decision 893, but also the California Court of Appeal's most recent Delta decision, which interpreted Term 14. In its 2006 decision in the *State Water Resources Control Board Cases* (2006) 136 Cal.App.4th 674, the Court of Appeal described the above-quoted portion of Decision 893 and Term 14's effect as follows:

[T]he Water Rights Board was explaining that the availability of water to applicants within Placer, Sacramento, and San Joaquin Counties that were naturally dependent on the American River was "reasonably assured" by the permit condition that restricted the export of water appropriated under the American River permits until the needs of those counties were fully met.

(*State Water Resources Control Board Cases* (2006) 136 Cal.App.4th, at p. 814 (this decision is often referenced as the "Robie Decision").)

3. *Subsequent State Water Resources Control Board Decisions Confirm Term 14's Intent And Do Not Reduce Its Effect*

The SWRCB has issued four post-Decision 893 decisions that discuss Term 14. None of those decisions has amended Term 14, limited its effect or changed its intent.

The SWRCB's decisions concerning Auburn Dam's water-right permits confirm our interpretation of Decision 893 and Term 14. Decision 1356 approved Reclamation's water-right applications for Auburn Dam and initially imposed a term on the resulting permits similar to Term 14. (Decision 1356, p. 16 (Term 19).) Based on a petition for reconsideration filed by Contra Costa Water District, however, the SWRCB removed

Term 19 from the Auburn Dam permits. In its December 17, 1970 Decision Amending and Affirming, As Amended, Decision 1356, the SWRCB stated the following about Term 14 (pp. 3-4):

The condition reflected a determination by the State Water Rights Board, based upon evidence in that proceeding, that giving to the three counties a preferential right to contract with the United States within a limited period of time for sufficient water to meet their future requirements was in the public interest and was an exercise of the Board's authority under Water Code Sections 1253, 1255 and 1257 (see page 52 of Decision D 893.)

The facts upon which the Board's determination was based were these: In the hearing leading up to Decision D 893, several entities within the three counties had pending applications to appropriate water from Folsom Reservoir, each seeking permits in its own name. Some of the applications had earlier priorities than the applications of the United States. However, the project works were owned and operated by the Federal Government, and, obviously, permits to those agencies would have been meaningless in view of the patent necessity of contracting for a supply of water from the federal facilities. The service areas which those applicants desired to supply could be supplied equally well by contract with the Federal Government rather than pursuant to independent permits. Permits were therefore issued to the United States to appropriate sufficient American River water to supply those who were then seeking permits and who were naturally dependent on that source, and availability of water to such applicants was to be assured, for a reasonable period, by the terms imposed in the United States' permits. The applications of others more remote from the river, such as Hollister Irrigation District and the City of San Jose, were denied in their entirety. The Board stated that they "must, if necessary, seek water from other sources" (page 54).

In that December 17, 1970 decision, the SWRCB went on to explain that its deletion of Term 19 did not affect any contracts for water supplies for Placer, Sacramento and San Joaquin Counties that Reclamation already had signed (pp. 6-7):

The Board's action is not to be construed in any sense as a "repudiation" of the agreements that have been executed with the United States nor is it to be construed as giving preference to more remote areas to contract for water from the subject project.

In its 2008 order revoking Reclamation's permits for Auburn Dam, the SWRCB briefly discussed Term 14 as follows:

In Decision 893, the State Water Rights Board found that it would be in the public interest to allow the counties of Sacramento, San Joaquin and

Placer (the counties) a specified period of time to negotiate water supply contracts with Reclamation before water from the Folsom Unit of the CVP could be delivered outside of those counties.

(Order WR 2008-0045, p. 22.)

Nothing in that 2008 order revised Term 14's protection of the ability of agencies in the relevant counties to obtain water to satisfy their "present or prospective" needs under their CVP contracts. In fact, that 2008 order reiterated that Term 14 was intended to reduce the administrative confusion that would have resulted if agencies had been granted their own water-right permits at Folsom Reservoir. (Order WR 2008-0045, p. 22 fn. 9.)

A 1982 SWRCB order concerning a permit for appropriations from the Pit River Arm of Shasta Lake also identified that potential administrative confusion as supporting Term 14 and stated that the 1982 permit did not present similar confusion with Reclamation's diversions at Shasta Dam. (Order No. 82-11, p. 4.)

In Decision 1641, the SWRCB briefly discussed Term 14, but did nothing to reduce the protection it provides for our agencies.¹ Nothing in Decision 1641 deleted Term 14 from the Folsom Unit's water-right permits or modified Term 14 in any way. Decision 1641 briefly discussed Term 14 in a footnote (p. 127, fn. 72), but it is noteworthy that the SWRCB did not modify that term even as it authorized Reclamation – for the first time – to deliver water appropriated under one of the Folsom Unit's permits (Permit No. 11316) for irrigation. (See Decision 1641, pp. 127 fn. 73, 163.)

No post-SWRCB decision has modified Term 14 in Reclamation's Folsom Unit permits, even though the SWRCB has expanded the authorized uses that Reclamation could make of water appropriated under those permits. In fact, the SWRCB's post-Decision 893 decisions consistently have recognized that Term 14 effectively was a substitute for granting agencies in Placer, Sacramento and San Joaquin Counties their own water-right permits to appropriate water at Folsom Dam. As discussed above, the interpretation of Term 14 that Reclamation stated at the February 10 workshop would defeat this purpose of Term 14 and therefore is incorrect.

4. *Conclusion*

Like all California water-right permit holders, Reclamation must comply with its permits' terms in operating its facilities. (Water Code §§ 1391, 1831.) Term 14 of Reclamation's Folsom Unit permits requires that Reclamation "fully meet" our agencies'

¹In Decision 1641, the SWRCB discussed Decision 893's terms in response to an argument by Westlands Water District that it was a legal user of water under Reclamation's water-right permits. In the Robie decision cited above, the California Court of Appeal ultimately decided that Westlands did have that status, but that its rights had not been injured by the relevant change to Reclamation's permits. (*State Water Resources Control Board Cases* (2006) 136 Cal.App.4th at pp. 804-805.)

Mr. Tim Rust
March 14, 2012
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contractual needs before exporting water appropriated under those permits outside of Placer, Sacramento or San Joaquin Counties. This does not necessarily mean that our agencies will always receive 100% of our CVP water-service contract amounts, given that Folsom Reservoir can store only a limited portion of the American River's runoff.

Term 14, however, does mean several things. First, it means that Reclamation's CVP M&I water shortage policy cannot discriminate against the American River Division, as proposed in Reclamation's 2005 environmental assessment. Second, it means that Reclamation cannot adopt a "no action alternative" in its EIS for that policy that would apply the same allocations to our agencies as to agricultural contractors in the export service areas. Third, it means that all of Reclamation's EIS alternatives must ensure that our agencies' water-supply needs are met. The operations by Reclamation that would be necessary to ensure compliance with Term 14 should be generally consistent with Reclamation's current operations, given Reclamation's variable allocations to divisions north and south of the Delta.

As always, we appreciate Reclamation's openness to comments during its development of the CVP M&I water shortage policy.

Very truly yours,

CITY OF ROSEVILLE

PLACER COUNTY WATER AGENCY

By:



Derrick Whitehead
Environmental Utilities Director

By:

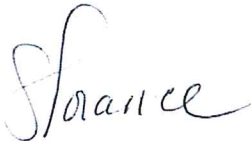


David Breninger
General Manager

SAN JUAN WATER DISTRICT

SACRAMENTO MUNICIPAL UTILITY
DISTRICT

By:



Shauna Lorance
General Manager

By:



Paul Lau
Assistant General Manager
Power Supply & Grid Operations

Cc: Michael Inthavong, Bureau of Reclamation
Amy Aufdemberge, Assistant Regional Solicitor
CVP M&I water shortage policy stakeholders
8683/M&I Shortage Policy/L031412 Term 14

Enclosure 3

Letter to Mr. Rick Woodley, dated June 25, 2012



June 25, 2012

Mr. Rick Woodley
Regional Resources Manager
U.S. Department of Interior
Bureau of Reclamation, Mid-Pacific Region
2800 Cottage Way
Sacramento, California 95825-1898

Re: Central Valley Project M& Water Shortage Policy – Draft EIS and
Term 14 of Folsom Unit's Water-Right Permits

Dear Mr. Woodley:

Thank you for your June 1, 2012 letters to our agencies in response to our March 14, 2012 letter concerning the application of Term 14 in Reclamation's water-right permits for the Folsom Unit (Permits Nos. 11315 and 11316) and its relationship to the environmental impact statement (EIS) that Reclamation is preparing for its municipal and industrial (M&I) shortage policy. Your letter correctly states that, at this time, our agencies and Reclamation do not have the same understanding concerning the requirements that Term 14 imposes on Reclamation's operation of the Folsom Unit. We believe that Reclamation's June 1 letter contains several key incorrect statements and omissions. We explain these incorrect statements and omissions in detail below. We believe that, when Reclamation reconsiders these points, it will agree with our interpretation of Term 14, as will be necessary for Reclamation to complete an EIS for the M&I water shortage policy that complies with the National Environmental Policy Act.

The June 1 letter contains the following key omissions and inaccurate statements:

1. The June 1 Letter Fails To Account For Decision 893's Explicit Statement Of The Intent Underlying Term 14

As quoted at length in our March 14 letter, the State Water Rights Board's Decision 893 – which granted the Folsom Unit's permits to Reclamation – expressly stated the following intent underlying Term 14:

Mr. Rick Woodley
June 25, 2012
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Permits are being issued to the United States to appropriate enough American River water to adequately supply the applicants naturally dependent on that source and availability of water to such applicants is reasonably assured by the terms to be contained in the permits to be issued to the United States restricting exportation of water under those permits insofar as exportation interferes [sic] with fulfillment of needs within Placer, Sacramento and San Joaquin Counties. Other applicants in more remote areas must if necessary seek water from other sources.

(Decision 893, p. 54 (emphasis added).)

We have included copies of the relevant pages of Decision 893 for your ease of reference.

The June 1 letter does not discuss this portion of Decision 893. Nothing in the June 1 letter explains how Reclamation's interpretation of Term 14 can be reconciled with Decision 893's express statement that Term 14 is intended to ensure that Reclamation does not deliver water appropriated from the American River outside Placer, Sacramento and San Joaquin Counties to the detriment of agencies protected by that term.

Furthermore, nothing in the June 1 letter acknowledges, or attempts to reconcile Reclamation's position with, the interpretation of Term 14 that the Court of Appeal stated in *State Water Resources Control Board Cases* 136 Cal.App.4th 674 (Cal.App. 2006). As quoted in our March 14 letter, the Court of Appeal interpreted Decision 893 as follows:

[T]he Water Rights Board was explaining that the availability of water to applicants within Placer, Sacramento, and San Joaquin Counties that were naturally dependent on the American River was "reasonably assured" by the permit condition that restricted the export of water appropriated under the American River permits until the needs of those counties were fully met.

(*State Water Resources Control Board Cases*, *supra*, 136 Cal.App.4th, at p. 814.)

We have included copies of the relevant pages of the Court of Appeal's decision for your ease of reference.

In *California v. United States*, 438 U.S. 645, 674-679 (1978), the U.S. Supreme Court declared that the Reclamation Act's section eight, 43 U.S.C. § 383, requires Reclamation to comply with the terms of water-right permits issued by California regulatory agencies unless Congress has clearly stated a contrary intent. As discussed further below, nothing in the Folsom Unit's authorizing legislation excuses Reclamation from complying with Term 14, which Reclamation accepted having full knowledge of that legislation's contents.

2. The June 1 Letter Mistakenly States That The Local Water-Right Applications That Term 14 Superseded Were Only For Natural Flows

As discussed at length in our March 14 letter, Term 14 effectively superseded water-right applications by our agencies and our predecessors that would have had priority over Reclamation's applications for the Folsom Unit. Reclamation's June 1 letter, however, states that this fact does not support the application of Term 14 consistent with Decision 893's explicit intent because those applications were only for a "natural flow right." Specifically, the June 1 letter states (emphasis added):

We appreciate the history you detailed in your March 14, 2012 letter regarding being afforded an opportunity to enter into a federal water service contract under the federal Reclamation laws in lieu of being granted a natural flow right by the SWRCB. One advantage of a CVP water service contract is that the source is generally water stored in CVP facilities and has a greater reliability than a natural flow right.

As explicitly stated in Decision 893, however, applications by our agencies and predecessors that were superseded by Term 14 included substantial storage of American River water (pp. 5, 11 (emphasis added)):

Application 12295 by City of Roseville seeks a permit for 350 cfs by direct diversion, year-round, and 120,000 afa by storage between October 1 and June 1 from American River for municipal purposes. The water is to be diverted and stored at Folsom Dam and will be used at the City of Roseville and environs.

Application 12300 by Fair Oaks Irrigation District seeks a permit for 50 cfs by direct diversion between April 1 and October 31 and 25,500 afa by storage between October 1 and June 1 from American River for irrigation and domestic purposes. The water is to be diverted and stored at Folsom Dam and will be used within Fair Oaks Irrigation District having an irrigable area of approximately 3,600 acres . . .

Application 12667 by Citrus Heights Irrigation District seeks a permit for 50 cfs by direct diversion, year-round, and 28,000 afa by storage between October 1 and June 1 from American River for irrigation and domestic purposes. The water is to be diverted at Folsom Dam and will be used within Citrus Heights Irrigation District.

Contrary to the June 1 letter, Reclamation's current interpretation of Term 14 would deny benefits that local agencies' water-right applications that Term 14 superseded would have granted. Specifically, Reclamation's application of an M&I water shortage

policy that does not account for Term 14 would not be the equivalent of the water-right applications that Term 14 superseded.

3. The June 1 Letter Mistakenly States That Reclamation Policy, As Reflected in CVP Water Service Contracts, Does Not Support Applying Term 14 According To Decision 893's Explicit Intent

The June 1 letter states "Reclamation's policy on shortage conditions, as expressed in your water contracts, is that CVP water service contractors share in shortages to CVP supplies, to the extent practicable, in accordance with the M&I water shortage policy." This statement fails to support Reclamation's interpretation of Term 14 for at least three reasons.

First, as discussed above, the Reclamation Act's section eight requires that Reclamation comply with the terms of its California water-right permits. (See *California v. United States*, *supra*, 438 U.S. at 674-679.) Whatever Reclamation's internal policies may be, they do not allow Reclamation to violate the Reclamation Act by refusing to implement water-right permit terms like Term 14.

Second, the Central Valley Project Improvement Act (CVPIA) indicates that the "Project Water" that Reclamation allocates under CVP water-service contracts must be allocated according to the terms of Reclamation's water-right permits. Two definitions in CVPIA reflect this specific congressional mandate. CVPIA section 3405(f) defines the term "Central Valley Project water" as "all water that is developed, diverted, stored, or delivered by the Secretary . . . in accordance with the terms and conditions or water rights acquired pursuant to California law." (Emphasis added.) Similarly, CVPIA section 3406(b)(2) defines the term "Central Valley Project yield" as "the delivery capability of the Central Valley Project during the 1928-1934 drought period after fishery, water quality, and other flow and operational requirements imposed by terms and conditions existing in licenses, permits, and other agreements pertaining to the Central Valley Project under applicable State or Federal law existing at the time of enactment of this title have been met." (Emphasis added.) CVPIA therefore requires Reclamation to implement Term 14 according to Decision 893's explicitly stated intent.

Third, the terms of our CVP water service contracts follow CVPIA's mandates in allocating water to our agencies. Most of our contracts define the key term "Project Water" – which is what Reclamation would distribute under the M&I water shortage policy – to be the water that Reclamation diverts under the terms of its water right permits. For example, Article 1(u) of San Juan's 2006 long-term water service contract, Roseville's 2011 interim contract and PCWA's 2011 interim contract defines "Project Water" as follows (emphasis added):

Project Water shall mean all water that is developed, diverted, stored, or delivered by the Secretary in accordance with the statutes authorizing the

Project and in accordance with the terms and conditions of water rights acquired pursuant to California law.

Article 10 of SMUD's 1970 CVP water-service contract requires Reclamation to "use all reasonable means to guard against a condition of shortage in the quantity of water available to the District [SMUD] pursuant to this contract." (Emphasis added.) Reclamation must comply with the terms of its water-right permits, so compliance with those terms is necessarily a "reasonable means to guard against a condition of shortage" in water delivered under SMUD's 1970 contract. Article 10 of that contract therefore requires Reclamation to comply with Term 14 in allocating water to SMUD.

Consistent with the Reclamation Act's section eight – as interpreted by the U.S. Supreme Court in *California v. United States* – and CVPIA, our water service contracts' explicit terms require Reclamation to implement Term 14's preference, as explicitly described in Decision 893.

4. The June 1 Letter Mistakenly Characterize Our Agencies As Relying On The Area-Of-Origin Laws

The June 1 letter, in its footnote two, states: "Reclamation is not obligated by state law to grant preferences to water stored in CVP facilities. 'Area of origin' protections apply only to natural flow rights" Our agencies' position in the current matter is based not on California's area-of-origin laws, but rather on Term 14 that the State Water Rights Board inserted into the Folsom Unit's purpose for the explicit purpose of ensuring that our agencies' "needs . . . present or prospective, are fully met" While that term does protect area-of-origin interests to some extent, Reclamation's obligation to comply with it derives not from the area-of-origin laws themselves, rather from its obligation to comply with all terms of its water right permits. Water Code §§ 1391, 1410(a); *Environ. Defense Fund v. East Bay Mun. Utility Dist.*, 26 Cal.3d 183, 197 (Cal. 1980). For this reason, and contrary to the June 1's footnote two, the recent decision in *Tehama-Colusa Canal Authority v. U.S. Department of Interior*, 2011 U.S. Dist. LEXIS 83497 (E.D.Cal. 2011), is irrelevant here.¹

5. The June 1 Letter's Interpretation Of The Folsom Unit's Authorizing Legislation Ignores That Legislation's Own Terms

The June 1 letter states, in footnote two, "[w]e note that the authorizing legislation for the American River Division, 63 Stat. 852, includes Congress' intent that American River Division facilities be integrated with the CVP and use for the 'widest possible public benefit,' similar to the Congressional authorization language at issue in TCCA [*sic*] case." This statement apparently refers to section four of that legislation.

¹Our agencies also believe that the *Tehama-Colusa* decision was incorrect and await the Ninth Circuit Court of Appeals' decision on appeal.

The June 1 letter ignores the following language contained in section two of the Folsom Unit's authorizing legislation (63 Stat. 853 (emphasis added)):

Nothing contained in this Act shall be construed by implication or otherwise as an allocation of water and in the studies for the purposes of developing plans for disposal of water as herein authorized the Secretary of the Interior shall make recommendations for the use of water in accord with State water laws, including but not limited to such laws giving priority to the counties and areas of origin for present and future needs.

In other words, in authorizing the Folsom Unit, Congress specifically recognized that California law gives "priority to the counties and areas of origin for present and future needs." Reclamation complied with this congressional directive partly by accepting Term 14 in the Folsom Unit's water-right terms to protect our agencies. While the June 1 letter acknowledges the Folsom Unit's authorizing legislation, nothing in that letter explains how Reclamation's interpretation of Term 14 could comply with that legislation's specific congressional directive concerning "State water laws . . . giving priority to the counties and areas of origin for present and future needs."

6. Term 14's Text And Intent, As Well As Reclamation's Past Practice, Indicate That Reclamation's Claim That Term 14's Effect Expired In 1975 Is Incorrect

The June 1 letter's footnote three states, in relevant part: "We believe that the Term 14 preference for beneficial use in the named counties by federal water service contract ended in 1975." The June 1 letter does not seek to reconcile this statement with Term 14's text, which indicates that the 1975 date (as an extension of the 1968 deadline adopted in Decision 893) is a deadline for the execution of contracts that would be covered by Term 14. Term 14's text that states the preference for our agencies – "Deliveries of water . . . shall not be made beyond the westerly or southerly boundaries thereof [of Placer, Sacramento and San Joaquin Counties], except on a temporary basis, until the needs of those counties, present or prospective, are fully met" – is not modified by the time deadline, which is part of the later clause that begins "provided, however" The June 1 letter states no explanation for how the 1975 deadline could modify the service obligation created by Term 14. Similarly, the June 1 letter contains no explanation for how applying a 1975 deadline to that service obligation could be consistent with Decision 893's explicit statement of intent concerning Term 14's effect. As discussed above in detail, the June 1 letter does not address that statement of intent at all.

Furthermore, if the June 1 letter's statement about the 1975 deadline is read as favorably as possible, it suggests that Reclamation views Term 14 as creating only a contracting preference for our agencies. Reclamation's past practice, however, does not reflect any such reading of Term 14. For example, Reclamation signed a contract to deliver CVP water to Westlands Water District in 1963, after Decision 893's issuance in

1958 and before Reclamation signed water-service contracts with some of our agencies. *Westlands Water Dist. v. United States*, 337 F.3d 1092, 1097 (9th Cir. 2003). Reclamation's past practice therefore indicates that it did not view Term 14 as establishing a contracting preference – as opposed to an allocation preference – for our agencies.

7. Reclamation's Interpretation Of Decision 1641 Cites No Authority And Ignores The Court Of Appeal's Interpretation Of That Decision

The June 1 letter states, in footnote three, "Term 14 has been superseded by Decision 1641's approval of Reclamation's consolidated place of use petition." As discussed in our March 14 letter, however, nothing in Decision 1641 revised Term 14 in any way. Reclamation's June 1 cites no authority to support its implicit claim that the State Water Resources Control Board (SWRCB) superseded Term 14 without actually saying it was doing so. Finally, the June 1 letter also does not address the Court of Appeal's 2006 decision concerning Decision 1641, which explicitly interprets Term 14 as having continuing effect following Decision 1641. (*State Water Resources Control Board Cases*, *supra*, 136 Cal.App.4th, at p. 814.)

8. Reclamation's Position On Public Health And Safety Supplies Demonstrates The Invalidity Of Reclamation's Interpretation Of Term 14

The June 1 letter states (emphasis added):

M&I contractors are allocated water according to their historic use, and Reclamation will make efforts to meet the public health and safety needs of M&I contractors under conditions of extreme shortages to CVP supplies.

In other words, notwithstanding the fact that Decision 893 explicitly states the intent to adopt a term "restricting exportation of water under [the Folsom Unit's] permits insofar as exportation interferes [*sic*] with fulfillment of needs within Placer, Sacramento and San Joaquin Counties" (Decision 893, p. 54), Reclamation will not commit to ensure our agencies even public health and safety levels of supply under our CVP water service contracts. Reclamation's refusal to make even this minimum commitment indicates that its interpretation of Term 14 would do nothing to ensure that, in Term 14's words, "the needs of [Placer and Sacramento] counties, present or prospective are fully met" Reclamation's interpretation of Term 14 therefore conflicts with that term's text and intent.

Conclusion


We appreciate Reclamation's effort to respond to our concerns with its June 1 letter. Unfortunately, that letter's interpretation of Term 14 contains numerous omissions and errors. The most fundamental of these problems with the June 1 letter is its failure to consider or address Decision 893's explicit statement of what it intended to do in adopting Term 14 as part of Reclamation's water-right permits for the Folsom Unit. The June 1 letter then compounds this error by failing to account for the Court of Appeal's 2006 interpretation of Term 14 according to this statement of intent.

We urge Reclamation to reconsider its June 1 letter and ensure that its EIS for the M&I shortage policy reflects Reclamation's compliance with Term 14 according to its explicit intent and terms. Reclamation cannot prepare an EIS that complies with the National Environmental Policy Act if its project description does not comply with the water-right permit terms that apply to the Folsom Unit as required by the Reclamation Act. "Where an action is taken pursuant to a specific statute, the statutory objectives of the project serve as a guide by which to determine the reasonableness of objectives outlined in an EIS." *Westlands Water Dist. v. U.S. Dept. of Interior*, 376 F.3d 853, 866 (9th Cir. 2004).


We look forward to discussing this matter with you further.

Very truly yours,

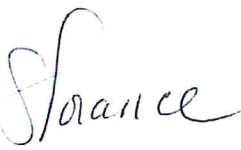
CITY OF ROSEVILLE

By: 
Derrick Whitehead
Environmental Utilities Director

PLACER COUNTY WATER AGENCY

By: 
David Breninger
General Manager

SAN JUAN WATER DISTRICT

By: 
Shauna Lorance
General Manager

SACRAMENTO MUNICIPAL UTILITY
DISTRICT

By: 
Paul Lau
Assistant General Manager
Power Supply & Grid Operations

Enclosures

Cc: Donald Glaser, Regional Director, Bureau of Reclamation

Mr. Rick Woodley
June 25, 2012
Page 9

Pablo Arroyave, Bureau of Reclamation
Michael Finnegan, Bureau of Reclamation
Timothy Rust, Bureau of Reclamation
Michael Inthavong, Bureau of Reclamation
Amy Aufdemberge, Assistant Regional Solicitor
CVP M&I water shortage policy stakeholders

8683/M&I Shortage Policy/L062512 Term 14
6/25/2012 8:28 AM

Enclosure 4
Letter to Mr. David Murillo, dated May 3, 2013



CITY OF
FOLSOM
DISTINCTIVE BY NATURE



May 3, 2013

Mr. David Murillo
Regional Director
U.S. Department of Interior
Bureau of Reclamation, Mid-Pacific Region
2800 Cottage Way
Sacramento, California 95825-1898

Re: Folsom Reservoir Management and Central Valley Project Allocations

Dear Mr. Murillo:

Our agencies write to express our serious concerns about the Bureau of Reclamation's planned management of Folsom Reservoir, and its allocations of CVP water-service contract supplies, this year. We believe that Reclamation is putting our communities' water supplies at serious risk and is not complying with the terms of Folsom Reservoir's water-right permits. We request a meeting with you, and Reclamation's Central Valley Operations staff, as soon as possible to discuss these serious issues. We will seek Reclamation's commitment that it will:

- Manage Folsom Reservoir's storage to ensure that the hundreds of thousands of people we serve will have adequate water supplies if the winter of 2013-2014 were to be dry – similar to the winters of 2007-2008, 2008-2009, 2011-2012 and 2012-2013; and
- Comply with the terms of its water-right permits for Folsom Reservoir by making CVP allocations consistent with those term's explicit language and the state's intent in including those terms in those permits.

Background on Our Region and Agencies

Because this region's communities were among the first in California, our agencies and others in this region hold, in the American River, some of the most senior water rights in the State of California. For example, San Juan Water District (San Juan) and the City of Folsom both hold water rights that date to the 1850s. The American River – and therefore Folsom Reservoir – provides a primary – and, in some cases, the only – water supply for our communities. Moreover, downstream of the reservoir, the City of Sacramento, Carmichael

Water District, Sacramento County Water Agency and Sacramento Suburban Water District use American River water. These surface-water supplies enable effective management of the region's groundwater supplies, which historically were overdrafted.

Notwithstanding this region's natural reliance on the American River, its agencies' very senior water rights and the protection provided by the area-of-origin laws that govern the CVP, we are necessarily dependent on Reclamation's operation of Folsom Reservoir. We – and every member of every community we serve – therefore are put at risk if Reclamation's operation of Folsom Reservoir does not ensure that it will continue to contain sufficient water to meet our region's needs. Unlike other areas of California, our region must rely solely on its local water sources to meet those needs.

Reclamation's Planned Management of Folsom Reservoir and Risks to This Region's Water Supplies in 2014

Reclamation has disclosed its plans for operating the CVP this year and they cause us serious concern about the risk to this region's water supplies next year. Reclamation's projected operations will create unacceptable risks for this region in 2014 if the winter of 2013-2014 were to be dry. Reclamation's March 2013 90% Forecast indicates that, under very dry, 90% exceedance conditions, Reclamation would draw storage in Folsom Reservoir down from 544,000 acre-feet at the end of May 2013 to a low of 191,000 acre-feet at the end of December 2013. (That forecast is enclosed.) According to that forecast, of this 353,000 acre-feet of drawdown, 299,000 acre-feet of it would occur between the end of May and the end of September, which appears to indicate that the draw-down will occur primarily to support Delta exports. While conditions this year may not be as dire as a 90%-exceedance year, the fact that Reclamation would plan to draw Folsom Reservoir down to 191,000 acre-feet of storage is a significant problem. According to Reclamation's forecast, that amount of storage would leave the reservoir at 365 feet, which only about 30 feet above water-supply intakes in the reservoir that serve our agencies. This margin for error is much too small given the fact that our agencies are – in the words of the water-right decision that granted Reclamation its water-right permits for the reservoir – "naturally dependent" on the American River. (Decision 893, p. 54 (copy enclosed).)

Even if conditions ultimately are not as dire as the 90%-exceedance level, Reclamation's planned operations are creating significant risks to our region. A comparison to the historically dry year of 1976-1977 is enlightening. There were approximately 400,000 acre-feet in Folsom Reservoir's storage when the 1976-1977 water year began on October 1, 1976. In 1976-1977, the reservoir eventually dropped to about 150,000 acre-feet in September 1977. (We have enclosed the CDEC display indicating this progression during 1976-1977.) Reclamation's planned operations very well may draw Folsom Reservoir down this year as low as it was on October 1, 1976, if not even lower as projected in the 90%-exceedance forecast. In effect, Reclamation apparently is willing to risk at least a repeat of 1977 storage levels – notwithstanding the fact that hundreds of thousands more people live in this region than lived here in 1977. While it may be appealing to believe that a year as dry as 1976-1977 is not likely to recur next winter, we note that each of the past two winters has included a three-month period as dry as any on record.

If conditions like those in 1976-1977 were to recur next winter, our communities could have a water-supply disaster in 2014 given just how low Reclamation apparently is willing to draw the reservoir this year. This is an unacceptable risk for this region, much of which has no surface water available to it other than water from the American River. Notwithstanding this region's senior water rights, they will be of no use if there is not enough water available in the reservoir.

Reclamation's 2013 CVP M&I Allocations and Reclamation's Water-Right Permits for Folsom Dam and Reservoir

We also are concerned about Reclamation's allocations of water to CVP M&I water-service contractors in 2013. Reclamation has allocated to American River Division M&I contractors 75% of their adjusted historic use, while allocating to M&I contractors serviced by Shasta Reservoir 100% of their full contract supplies and Delta-export M&I contractors 70% of their adjusted historic use. The allocation to American River Division contractors does not comply with Term 14 in Reclamation's water-right permits for Folsom Dam and Reservoir (Permits Nos. 11315 and 11316).

In Decision 893, the State Water Rights Board imposed Term 14 on Reclamation's permits in order to ensure that water agencies in this region would have their "present or prospective" needs "fully met" by Reclamation before Reclamation committed American River water to others. (The enclosed excerpts from Decision 893 include Term 14.) As explained in March 14, 2012 and June 25, 2012 letters to Reclamation, the City of Roseville, San Juan Water District, Placer County Water Agency and the Sacramento Municipal Utility District signed water-service contracts with Reclamation that are protected by Term 14.

Reclamation's M&I allocations, in combination with its 2013 operational projections, demonstrate that Reclamation has sufficient water available to it from Folsom Reservoir to fully meet the American River Division contractors' water demands, but is choosing to allocate that water elsewhere. According to Reclamation's 2005 environmental assessment for the CVP M&I water shortage policy, the combined water-service contracts of this region's American River Division contractors total 180,750 acre-feet and we have not sought delivery of that full collective contract amount this year. Reclamation's March 2013 90% Forecast indicates that, in the 90%-exceedance scenario, Reclamation would draw Folsom Reservoir's storage down by 324,000 acre-feet between the end of May 2013 and the end of October 2013. Reclamation's March 2013 50% Forecast (copy enclosed) indicates that, in the 50%-exceedance scenario, Reclamation would draw the reservoir's storage down by 310,000 acre-feet between the end of May 2013 and the end of October 2013. Each of these projected drawdowns is about one-third of the reservoir's total storage.

In combination with the relatively low amount of contract deliveries our region's contractors are seeking, the very substantial projected drawdown of Folsom Reservoir storage indicates that, whatever this year's projected hydrology, Reclamation is depending substantially on those drawdowns to meet downstream demands. The fact that these drawdowns are occurring because of Reclamation's operational choices, and not dry hydrology, is indicated by the fact that M&I contractors that are serviced by Shasta Reservoir are receiving no reduction in their water supplies this year. Based on past experience and Reclamation's statements in the administrative

Mr. David Murillo
May 3, 2013
Page 4

draft EIS (ADEIS) for the OCAP remand, this year's allocations suggest that Reclamation is continuing to rely on releases from Folsom Reservoir storage as the "first responder" to meet Delta water quality requirements that apply to not just the CVP's reservoirs, but those of the State Water Project as well. (See ADEIS, pp. 5-57 to 5-58.) This choice to maximize Reclamation's operational convenience is not mandated by any law, regulation, policy, contract or water-right term and, in fact, is inconsistent with Term 14 and California's area-of-origin laws. In addition, imposing a disproportionate burden on the CVP and SWP's smallest Sacramento Valley reservoir subjects this region's economy and environment to unacceptable risks.

Reclamation's treatment of the American River Division's M&I contractors is inconsistent with Term 14 in Reclamation's Folsom water-right permits, as well as California's area-of-origin laws. We object to this inconsistency and urge you to correct it. We also urge you to ensure that the CVP M&I water shortage policy that Reclamation is developing is consistent with Term 14.

Conclusion

Reclamation's projected operations of Folsom Reservoir this year will create an unacceptable water-supply risk for this region, which is naturally dependent on the American River. Reclamation's CVP M&I allocations for the American River Division are not consistent with the terms of Reclamation's water-right permits for Folsom Dam and Reservoir. We respectfully request a meeting with you as soon as possible to discuss these serious issues. At this meeting, we will seek Reclamation's commitment that it will:

- Manage Folsom Reservoir's storage to ensure that the hundreds of thousands of people we serve will have adequate water supplies if the winter of 2013-2014 were to be dry; and
- Comply with the terms of its water-right permits for Folsom Reservoir by making CVP allocations consistent with those terms' explicit language and the supporting intent stated in Decision 893.

Very truly yours,

CITY OF FOLSOM



By:

Michael Kashiwagi
Interim Director
Environmental & Water Resources

CITY OF ROSEVILLE




By:

Ed Kriz
Interim Environmental Utilities
Director

Mr. David Murillo
May 3, 2013
Page 5

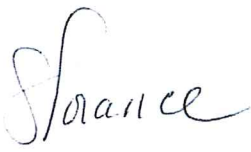
PLACER COUNTY WATER AGENCY

By: 
David Breninger
General Manager

SACRAMENTO MUNICIPAL UTILITY
DISTRICT

By: 
Paul Lau
Assistant General Manager
Power Supply & Grid Operations

SAN JUAN WATER DISTRICT

By: 
Shauna Lorance
General Manager

Enclosures

8683/M&I Shortage Policy/L050313 Term 14

Cc: Pablo Arroyave, Bureau of Reclamation
Tim Rust, Bureau of Reclamation

Enclosure 5

Letter to Mr. Mike Kashiwagi, dated June 7, 2013



United States Department of the Interior

BUREAU OF RECLAMATION
Mid-Pacific Region
Central California Area Office
7794 Folsom Dam Road
Folsom, CA 95630-1799

RECEIVED

JUN 10 2013

UTILITIES DEPT.

IN REPLY REFER TO:

CC-400
WTR-4.00

JUN 07 2013

Mr. Mike Kashiwagi
Interim Director of Utilities
City of Folsom
50 Natoma Street
Folsom, California 95630

Subject: Reply to American River Municipal and Industrial (M&I) Contractors Letter Dated May 3, 2013, Regarding Folsom Reservoir Management and Central Valley Project (CVP) Allocations

Dear Mr. Kashiwagi:

On behalf of Mr. David Murillo, Mid-Pacific Regional Director, I am responding to the American River M&I Contractors letter identifying concerns about the planned management of Folsom Reservoir and allocations of CVP water this year. We understand that you are seeking the Bureau of Reclamation's commitment to manage Folsom Reservoir in 2013 in a manner that will ensure adequate water supplies for the 2014 water year if 2014 is a dry year. Additionally, the letter requested that Reclamation comply with Term 14 of our water rights permit for Folsom Reservoir.

Folsom Reservoir is managed for multiple purposes and deliveries for which M&I use are one of Reclamation's several priorities. These purposes include flood control, water supply, power generation, water quality, fish, and wildlife to name a few. With these multiple obligations, Reclamation develops plans, using the tools available, to forecast and meet these obligations under varying hydrologic conditions. It is always Reclamation's intent and practice to operate its facilities and projects in a way that will maximize carryover storage and preserve the quantity and quality of water to meet the needs of its many customers and purposes, within the requirements of applicable rules and regulations.

As explained in our June 1, 2012, response to your March 14, 2012, letter Term 14 of Reclamation's water rights permits for Folsom Dam and Reservoir gave agencies within Placer, Sacramento, and San Joaquin counties a preference to contract with Reclamation for water service from Folsom Reservoir. That preference expired at the end of 1975. San Juan Water District (of which city of Folsom is a subcontractor), Placer County Water Agency, Sacramento Municipal Utility District, and the city of Roseville entered into water service contracts (Contracts) with Reclamation prior to 1975. The extent of the applicability of Term 14 was to

give the described entities only a preference to contract with Reclamation; Term 14 does not obligate Reclamation to grant your agency a preference in deliveries of CVP water and provide more reliability under your water service contract than any other CVP M&I contractor. Furthermore, the Contracts contain a shortage article which states the CVP water furnished under the Contracts will be allocated in accordance with the then-existing CVP M&I Water Shortage Policy.

We understand your concern related to adequate water supply this year and next given the possibility of continued drought conditions. Reclamation maintains its commitment to meet with the American River M&I Contractors periodically to ensure the Contractors have the latest hydrologic and operational information in order to develop a strategy to deliver water that best meets your customer's need. As requested in your letter we invite you to a meeting on Friday, June 14, 2013, at 9:00 a.m. at the Central California Area Office in Folsom, with the Regional Director.

Please contact me at 916-989-7180 or e-mail dlessard@usbr.gov if you have any questions or would like additional information related to the upcoming meeting.

Sincerely,



Drew F. Lessard
Area Manager

Identical Letter Sent To:

Mr. David A. Breninger
General Manager
Placer County Water Agency
P.O. Box 6570
Auburn, California 95604

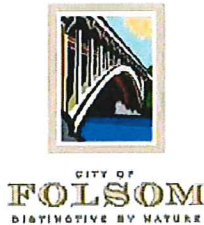
Ms. Shauna Lorance
General Manager
San Juan Water District
P.O. Box 2157
Granite Bay, California 95746

Mr. Ed Kriz
Interim Director of Environmental Utilities
City of Roseville
2005 Hilltop Circle
Roseville, California 95747-9704

Mr. John Distasio
General Manager
Sacramento Municipal Utility District
P.O. Box 15830
Sacramento, California 95852-1830

Enclosure 6

Letter to Mr. Tom Howard, dated March 10, 2014



March 10, 2014

Mr. Tom Howard
Executive Director
State Water Resources Control Board
Post Office Box 100
Sacramento, California 95812-0100

VIA E-MAIL
Tom.howard@waterboards.ca.gov

Re: CVP/SWP Temporary Urgency Change – Request for Folsom Reservoir
Operations Plan

Dear Mr. Howard:

The Cities of Folsom and Roseville and San Juan Water District serve approximately 500,000 people in Sacramento and Placer Counties. The American River is our local water source and each of our agencies depends on deliveries from Folsom Reservoir by the Bureau of Reclamation as our primary water supply. Consistent with the SWRCB's March 3, 2014 Modified Announcement for Revised Order on Temporary Urgency Change Petition for the Central Valley Project (CVP) and the State Water Project (SWP), we request that the SWRCB include in the order for Reclamation to issue, by April 15, 2014, an operations plans for Folsom Reservoir and the American River that would describe how Reclamation will ensure that adequate water supplies are available in that reservoir for our agencies and the American River region throughout this water year and into the 2014-2015 water year.

Background on Our Agencies

The primary water supply for our agencies and the approximately 500,000 people we serve is water diverted from Folsom Reservoir through the reservoir's water-supply intake. That intake would be dry if the amount of water stored in the reservoir were to drop below approximately 100,000 acre-feet (AF). Our agencies would begin to have serious water-supply problems at reservoir levels well above 100,000 AF because the intake's efficiency declines significantly as the intake is uncovered and air is drawn into our pipelines. As has been well reported, our intake was at serious risk of being dry as early as March or April before recent storms increased the amount of water stored in Folsom Reservoir. The reservoir reached its low point so far this year on February 6, 2014, when 162,617 AF were stored in the reservoir. As the SWRCB probably is aware, this water level was low enough that the foundations of buildings that had been inundated by the reservoir were exposed.

All of our agencies are located in the area of origin protected from impacts from the CVP's operation. (See Water Code §§ 11128, 11460.) In addition, each of our agencies holds priority rights in the operation of Folsom Reservoir.

Folsom owns portions of the oldest water right in the South Fork of the American River, specifically a right based on an 1851 notice by the Natomas Water Company. That right is the basis for settlement contracts with Reclamation in which the City of Folsom holds rights, specifically Contract No. 14-06-200-5515A and Contract No. 14-06-200-4816A. Under those contracts, Folsom has the right to 27,000 AF a year (AFY) of deliveries from Folsom Reservoir. Those contracts do not authorize dry-year reductions by Reclamation. As authorized by Public Law No. 101-514, Folsom is also a subcontractor under Sacramento County Water Agency's CVP water-service contract.

San Juan Water District owns the oldest water right in the North Fork of the American River, specifically a right initiated by the North Fork Ditch Company in 1853. That right is the basis of a settlement contract with Reclamation that the District holds, namely Contract No. DA-04-167-eng-610. Under that contract, the District holds a right to 33,000 AFY of deliveries from Folsom Reservoir. That contract does not authorize dry-year reductions by Reclamation. The District also holds a 24,200 AFY CVP water-service contract with Reclamation.

Before Reclamation received its water-right permits for Folsom Dam and Reservoir, Roseville filed a water-right application for at least 120,000 AF a year from the American River. The State Water Rights Board (SWRB) considered that application while considering Reclamation's applications for Folsom Dam and Reservoir. In Decision 893, the SWRB decided not to approve Roseville's application, stating:

Permits are being issued to the United States to appropriate enough American River water to adequately supply the applicants naturally dependent on that sources and availability of water to such applicants is reasonably assured by the terms to be contained in the permits to be issued to the United States restricting exportation of water under those permits insofar as exportation interferes [*sic*] with fulfillment of needs within Placer, Sacramento and San Joaquin Counties.

The SWRB inserted Term 14 in Reclamation's Permits Nos. 11315 and 11316 to reflect this intent. (See *State Water Resources Control Board Cases* (2006) 136 Cal.App.4th 674, 814.) Roseville signed its 32,000 AFY CVP water-service contract with Reclamation in 1967. That contract is protected by Term 14. San Juan's CVP water-service contract also is protected by Term 14. Like Roseville, San Juan's predecessor agency also had filed its own pre-CVP water-right application for American River water.

In addition to Roseville's and San Juan's contracts with Reclamation, both agencies also have and use water-supply contracts with Placer County Water Agency (PCWA) for water that PCWA appropriates in its Middle Fork Project. Roseville's PCWA contract is for 30,000 AFY and San Juan's contract is for 25,000 AFY. Crucially, however, both Roseville and San Juan currently can only take delivery of their PCWA supplies through Folsom Reservoir's intake. Similarly, Folsom can only access water under its CVP water-service subcontract through that intake. While Folsom, Roseville and San Juan have contracts to water supplies under diverse sources, all of those supplies are dependent on Reclamation's operation of Folsom Reservoir

Mr. Tom Howard
March 10, 2014
Page 3

because all or nearly all water from those sources must be delivered through the intake in the reservoir.

NMFS Biological Opinion and Reclamation's Folsom Reservoir Projections

The National Marine Fisheries Service's (NMFS) 2009 biological opinion currently controls Reclamation's operation of Folsom Reservoir to meet streamflows in the lower American River. (A copy of the relevant portions of the biological opinion are attached.) For the American River, that biological opinion incorporates the 2006 Water Forum flow management standard (FMS). (Biological opinion, p. 613.) The FMS and the biological opinion contain an "off-ramp" from the specified flow standards that is triggered when it can be projected that storage in Folsom Reservoir will drop below 200,000 AF at any time during the next 12 months. (Biological opinion, Appendix 2-D, p. 1.) Under these off-ramp criteria, Reclamation has managed releases for lower American River streamflows in consultation with an "American River Group" (ARG) that includes NMFS, the U.S. Fish and Wildlife Service, the California Department of Fish and Wildlife and others.

The off-ramp criteria were triggered in 2013. That off-ramp remains in effect because Reclamation's latest operational projections indicate that Folsom Reservoir's storage very well might decline below 200,000 AF within the next twelve months. Reclamation's February 2014 projection for a 90% exceedance scenario with "minimum regulatory standards" – which we understand to include D-1641 Delta outflow requirements – show the reservoir's storage declining to 174,000 AF in August 2014 and reaching 127,000 AF in September. Reclamation's February 2014 projection for a 90% exceedance scenario with "minimum releases" – which we understand would involve some relief from D-1641's Delta-outflow requirements – show the reservoir's storage declining to a low of 235,000 AF in September 2014. (We have enclosed copies of both projections.) While Reclamation's projections show Folsom Reservoir storage increasing in October and November, our experience has indicated that the reservoir generally continues to decline in those months. Reclamation's projections therefore may underestimate how far the reservoir may decline before next winter. Consistent with the last three winters, Reclamation's operations plan must assume that next winter may be dry.

So far this water year, Reclamation's practice in operating under the biological opinion's off-ramp has been to determine Folsom Reservoir operations in real time through consultations with the ARG. Those consultations, along with the precipitation that our region has received, have allowed Reclamation to operate in real time beginning in December 2013 to avert the water-supply disaster that appeared to be looming in December. In order for our agencies to adequately plan for another potentially dry year next year, however, we request that the SWRCB include in the order for Reclamation to develop and submit a Folsom Reservoir operations plan to you.

Request for Inclusion of Folsom Reservoir Operations Plan in Modified Order

Your March 3 Modified Announcement requests comments on "[a] requirement to maintain a minimum quantity of water in Project reservoirs at the end of September sufficient to meet health and safety needs in the event of continued drought next year." As discussed above, a

Mr. Tom Howard
March 10, 2014
Page 4

well-defined operations plan for Folsom Reservoir is critical for our agencies, and the American River region as a whole, to plan for providing water to the public during the rest of this year and into next year. We request that the SWRCB insert the following term in its next urgency order concerning CVP and SWP operations:

No later than April 15, 2014, Reclamation will deliver to the Deputy Director Reclamation's plan for operating Folsom Reservoir to meet the needs of water suppliers in the American River region, pursuant to their CVP contracts and water rights, and the lower American River during this water year and, assuming next winter is dry, the 2014-2015 water year. To develop this plan, as soon as possible, Reclamation will consult with water suppliers adjacent to Folsom Reservoir and the lower American River, as well as the Water Forum, concerning: (1) Reclamation's operation of that reservoir this water year; (2) a storage target for September 30, 2014; and (3) operations during the 2014 fall salmon spawning season. Reclamation will continue to consult with affected American River stakeholders throughout this year and will deliver any amendments to its operations plan to the SWRCB promptly upon Reclamation's adoption of those amendments. Reclamation will operate Folsom Reservoir according to its operations plan until at least January 1, 2015. Reclamation will promptly deliver copies of its operations plan that is due April 15, 2014, and any amendments to that plan, to the affected water suppliers and the Water Forum.

Such an operations plan will enable better planning for both water supplies and the lower American River's fish – including steelhead and fall-run Chinook salmon – by providing more definition to the "off-ramp" contained in NMFS's biological opinion.

Conclusion

We appreciate the opportunity to comment on the terms that the SWRCB may include in its revised temporary order for CVP and SWP operations. If you have any questions, please do not hesitate to contact any of us.

Very truly yours,

CITY OF FOLSOM

CITY OF ROSEVILLE

SAN JUAN WATER
DISTRICT

By:




Marcus Yasutake
Environmental and
Water Resources Director

By:



Ed Kriz
Director, Environmental
Utilities

By:



Shauna Lorance
General Manager

Mr. Tom Howard

March 10, 2014

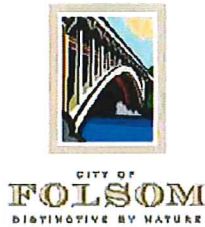
Page 5

Enclosures

8618/American River/L031014rsb SWRCB Order

Cc: Felicia Marcus
Frances Spivy-Weber
Tam Dudoc
Steven Moore
Dorene D'Adamo
Michael Buckman
Tom Gohring

Enclosure 7
Letter to Mr. Tom Howard, dated April 25, 2014



April 25, 2014

Mr. Tom Howard
Executive Director
State Water Resources Control Board
Post Office Box 100
Sacramento, California 95812-0100

VIA E-MAIL
Tom.howard@waterboards.ca.gov

Re: CVP/SWP Temporary Urgency Change – Response to San Luis & Delta-Mendota Water Authority Opposition to American River Operations Plan

Dear Mr. Howard:

As the State Water Resources Control Board is aware, this year's severe drought conditions seriously impacted Folsom Reservoir, the reservoir adjacent to our communities that is our primary water supply. The reservoir reached what will hopefully be its low point on February 6, 2014, when there was 162,617 acre-feet of water in storage. That amount was approximately 16% of the reservoir's capacity, with a water level of 357 feet above mean sea level. That was only about 25 feet above the level at which our only water-supply intake in the reservoir would be dry. At that point, the approximately 500,000 people we serve could have their water supplies severely limited. At this level, their water supplies could be restricted to a level that provides only enough water for basic indoor water needs. Based on this experience, in our March 10, 2014 letter to you, we requested that the SWRCB add to the CVP/SWP temporary urgency order a term requiring Reclamation to prepare a Folsom Reservoir operations plan to address the need for more water-supply certainty moving into the 2014-2015 water year. Given the very dry conditions over the last three years, there are no guarantees that next winter will be any wetter than this past winter. As a result, there are no guarantees that the condition of Folsom Reservoir will be better next year than this year. As explained in more detail below, the need for a Folsom Reservoir operations plan that protects our communities' public health and safety is growing ever more pressing because Reclamation currently is planning to enter next water year with the reservoir 80,000 to 90,000 acre-feet lower than it entered this water year.

A Folsom Reservoir Operations Plan Is Urgently Necessary Because Reclamation Plans To Start Next Water Year With Even Less Water In Storage Than It Did This Water Year

Our request for a Folsom Reservoir operations plan that will protect our 500,000 residents' health and safety has only grown more urgent since we sent our March 10 letter. In the draft operations plan that Reclamation shared with the American River Group last week (copy enclosed), Reclamation projects drawing Folsom Reservoir down to an end-of-September

carryover level of 273,000 acre-feet in a dry 90%-exceedance scenario and 287,000 acre-feet in a normal 50%-exceedance scenario. These are dangerously low storage levels that present a serious risk to our residents' health and safety. For perspective, the reservoir held 361,108 acre-feet in storage on September 30, 2013. In other words, Reclamation's planned operation of the reservoir apparently will drain Folsom Reservoir approximately 80,000 to 90,000 acre-feet lower than the level at which the reservoir began the current water year. Under Reclamation's latest operations plan and if Reclamation had entered this past winter with Folsom Reservoir holding 80,000 to 90,000 acre-feet less than it did, there would have been a distinct possibility that our agencies' water-supply intake could have been dry as early as February or March 2014. If precipitation in late 2014 were to mirror precipitation in late 2013 and early 2014, our water supplies could be at risk as early as February 2015, with water surface elevations dropping below our water-supply intake.

Moreover, it appears that the Real-Time Drought Operations Team (RTDOT) created by the SWRCB's urgency order is not appropriately considering the need to protect our communities' public health and safety. On April 21, 2014, Reclamation implemented a pulse flow, apparently at the request of the "fish agencies," increasing releases to the lower American River from 500 cfs on April 21 to 1,500 cfs later that day with a ramp-down to 800 cfs by the end of the day on April 25. As far as our agencies are aware, the RTDOT's members did not consult with any interested stakeholders concerning either the pulse flow or the apparent plan to maintain American River releases at 800 cfs indefinitely. With Reclamation's operational plan indicating that our communities' water supplies may be put at serious risk given the Folsom Reservoir storage level at which Reclamation plans to enter next water year, the RTDOT's apparent willingness to increase releases from the reservoir without any discussion with our agencies or any other American River stakeholders is extremely troubling. It is particularly troubling because, through the Water Forum, our agencies and many other stakeholders have engaged extensively with Reclamation, the National Marine Fisheries Service and the U.S. Fish and Wildlife Service concerning American River flows and conditions earlier in this drought year. Such consultations are critically important where the RTDOT's members are managing the water supplies that we deliver to meet our communities' basic human needs.

San Luis & Delta-Mendota's Arguments Conflict With Public Policy And Are Legally Incorrect

Notwithstanding the pressing need for a Folsom Reservoir operations plan to protect our communities' public health and safety, in a March 26, 2014 letter, the San Luis & Delta-Mendota Water Authority (SLDMWA) opposed our request for an operations plan for the reservoir. In short, SLDMWA argued that our agencies, as CVP contractors, have no priority to any supply from Folsom Reservoir, whether under the area of origin laws, the water-right terms that the SWRCB's predecessor agency applied to Reclamation's Folsom water-right permits to protect this region or any other source. The implication of SLDMWA's argument is that the SWRCB should take no steps to ensure that the 500,000 people we serve who rely on the reservoir as a local water source will have an adequate water supply if next winter were to be dry.

It is important to remember the disparity in our agencies' contracts with Reclamation and the contracts held by SLDMWA's members. All of our agencies' supplies under settlement

contracts with Reclamation, CVP water-service contracts and subcontracts under CVP water-service contracts total 123,200 acre-feet a year. Roseville and San Juan also hold contracts for supplies from Placer County Water Agency (PCWA) under PCWA's water rights that total 55,000 acre-feet a year. At 100% allocations under all of those contracts, our communities' demands from Folsom Reservoir total 178,200 acre-feet a year. All of those supplies – even those under PCWA contracts – are put at risk if there is a risk of Folsom Reservoir levels declining below our water-supply intake. In contrast, the CVP water-service contract for just one SLDMWA member, namely Westlands Water District, is 1,150,000 acre-feet per year. While CVP deliveries to SLDMWA's members of course have been constrained for some time, and are severely constrained this year, requiring Reclamation to adopt a plan to protect our agencies' relatively small – yet critical – water supplies would appear to have little impact on supplies for SLDMWA's members.

SLDMWA's argument in favor of subjecting our residents' primary water supply for drinking, cooking and bathing to significant risk entering next water year is contrary to public policy. (See, e.g., Water Code §§ 106 (“It is hereby declared to be the established policy of this State that the use of water for domestic purposes is the highest use of water”); 106.3(a) (“It is hereby declared to be the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes”).) SLDMWA's arguments also contain numerous legal flaws:

1. SLDMWA ignores settlement contracts. As explained in our March 10 letter, Folsom and San Juan hold settlement contracts with Reclamation that reflect their pre-CVP – indeed, pre-1860 – water rights. Those contracts do not allow for dry-year reductions, whatever interpretation is applied to CVP water-service contracts. SLDMWA ignores the existence of the settlement contracts.
2. Congress's authorization of Folsom Reservoir contradicts SLDMWA's argument. Congress authorized the construction of Folsom Dam and Reservoir in 1949's Public Law 81-356 (copy enclosed). That act contains the following direction to the Secretary of the Interior:

Nothing contained in this Act shall be construed by implication or otherwise as an allocation of water and in the studies for the purposes of developing plans for disposal of water as herein authorized *the Secretary of the Interior shall make recommendations for the use of water in accord with State water laws, including but not limited to such laws giving priority to the counties and areas of origin for present and future needs.* (63 Stat. 853 (emphasis added, copy enclosed).)

As explained in our March 10 letter and below, the practical method by which this direction was implemented was Term 14 as adopted by the State Water Rights Board in Decision 893. While SLDMWA has benefitted from the consideration of the specific terms of congressional authorizations of other CVP units (see *Tehama-Colusa Canal Authority v. U.S. Dept. of Interior* (E.D.Cal. 2011) 819

F.Supp.2d 956, 976-978 (discussing act authorizing Tehama-Colusa Canal)), its argument here is contrary to Folsom Dam and Reservoir's authorizing act.

3. SLDMWA ignores binding legal authority concerning the effect of Folsom Reservoir's permit terms. In Decision 893, the State Water Rights Board made it crystal clear what the effect of the decision's Term 14 would be:

Permits are being issued to the United States to appropriate enough American River water *to adequately supply the applicants naturally dependent on that source* and availability of water to such applicants is reasonably assured by *the terms to be contained in the permits to be issued to the United States restricting exportation of water* under those permits insofar as exportation interferes with fulfillment of needs within Placer, Sacramento and San Joaquin Counties. *Other applicants in more remote areas must if necessary seek water from other sources.* (Decision 893, p. 54 (emphasis added).¹

In its landmark 2006 decision concerning D-1641, the Court of Appeal interpreted Term 14 adopted by Decision 893 (which SLDMWA identifies as Term 11) in response to arguments by SLDMWA's member Santa Clara Valley Water District. (*State Water Resources Control Board Cases* (2006) 136 Cal.App.4th 674, 814.) The Court of Appeal interpreted the above discussion in Decision 893 and stated:

Understandably, Santa Clara does not claim that Santa Clara County is an area *naturally* dependent on water from the American River. Moreover, the language following "United States" refers to a permit condition that, as the decision states, was imposed to protect the "fulfillment of needs within Placer, Sacramento and San Joaquin Counties." Thus, the Water Rights Board was explaining that the availability of water to applicants within Placer, Sacramento, and San Joaquin Counties that were naturally dependent on the American River was "reasonably assured" by *the permit condition that restricted the export of water appropriated under the American River permits until the needs of those counties were fully met.* (*State Water Resources Code Board Cases*, 136 Cal.App.4th, at p. 814 (first emphasis in original, second emphasis added).)

This binding legal interpretation of the key permit term contradicts the entirety of SLDMWA's legal position. While we cited the Court of Appeal's decision in our March 10 letter, SLDMWA ignores it.

4. SLDMWA relies on non-binding dicta from a decision that warns against relying on non-binding dicta. SLDMWA's argument relies largely on the Ninth Circuit

¹As explained in our March 10 letter, Roseville and San Juan's predecessor Fair Oaks Irrigation District were among the "applicants naturally dependent" on the American River at the time of Decision 893.

Court of Appeals' decision in *Tehama-Colusa Canal Authority v. U.S. Dept. of Interior* (9th Cir. 2013) 721 F.3d 1086. The Ninth Circuit held that Water Code section 11460 did not give Tehama-Colusa Canal Authority's (TCCA) members a priority to CVP water-service contract supplies even though they were located in the CVP's area of origin and that those laws could have given TCCA's members priority if they were to file their own water-right applications. (721 F.3d, at p. 1097.)² In doing so, the Ninth Circuit stated that the Court of Appeal's *State Water Resources Control Board* decision was not controlling:

[A]s the district court noted, the decision in *SWRCB Cases* lacks persuasive power because: (1) CVP contracts were not at issue in that proceeding; (2) there was no comprehensive discussion of the CVP project; and (3) the proposed interpretation of [Water Code] § 11460 by [TCCA] and its members would nullify explicit provisions of the renewal contracts. (721 F.3d, at p. 1096.)³

While SLDMWA benefited from the Ninth Circuit's dismissal of certain statements in the Court of Appeal's *State Water Resources Control Board Cases* decision as involving questions not at issue in that decision and therefore non-binding dicta, SLDMWA relies on a discussion of Shasta Reservoir's water-right permit terms by the Ninth Circuit, even though those permit terms were not at issue before the Ninth Circuit because TCCA relied wholly on Water Code section 11460. Moreover, the *State Water Resources Control Board Cases*' holding concerning Term 14 is a binding interpretation of a California water-right permit terms by a California Court of Appeal.

SLDMWA's arguments in opposition to our agencies' request for a Folsom Reservoir operations plan have no merit.

Conclusion

Given the ever more pressing need for a Folsom Reservoir operations plan that protects our communities' water supplies – as well as the water supplies for all of the other communities in the Sacramento region – and the apparent opposition to even that basic level of protection for our supplies, we plan to participate actively in the SWRCB's May 6 workshop concerning

²As discussed in our March 10 letter and above, Roseville and San Juan's predecessor filed exactly the sort of water-right applications that would have had area-of-origin priority under the Ninth Circuit's logic and received the protection of Term 14 as a result.

³In contrast to the situation with the CVP water-service contracts of TCCA's members, Term 14 is incorporated into CVP water-service contracts because they define the key term "Project Water" as water that "is developed, diverted, stored, or delivered by the Secretary . . . in accordance with the terms and conditions of water rights acquired pursuant to California law." Under the Ninth Circuit's logic, because SLDMWA's members receive water under such water-service contracts, they are precluded from disputing the applicability and effect of Term 14. Of course, even leaving aside the definition of "Project Water," Reclamation of course must comply with the terms of its water-right permits.

Mr. Tom Howard
April 25, 2014
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possible changes to the CVP/SWP temporary urgency order. Please do not hesitate to contact any of us if you have any questions.

Very truly yours,


CITY OF FOLSOM

CITY OF ROSEVILLE

SAN JUAN WATER
DISTRICT

By: 

Marcus Yasutake
Environmental and
Water Resources Director


By: 

Ed Kriz
Director,
Environmental
Utilities

By: 

Shauna Lorange
General Manager

BARTKIEWICZ, KRONICK & SHANAHAN
A Professional Corporation

By: 

Ryan S. Bezerra

Attorneys for the City of Folsom, the City of Roseville
and San Juan Water District

Enclosures

8618/American River/L042514rsb SWRCB Urgency

Cc (w/encl): Hon. Tom McClintock
Hon. Ami Bera
Hon. Ted Gaines
Hon. Darrell Steinberg
Hon. Ken Cooley
Hon. Beth Gaines
Felicia Marcus
Frances Spivy-Weber
Tam Dudoc
Steven Moore
Dorene D'Adamo
Michael Buckman
David Murillo
Drew Lessard
Tom Gohring

Mr. Tom Howard
April 25, 2014
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Ron Stork
Clyde Macdonald
Dan Nelson

DRAFT April 2014

90%-Runoff Exceedance Outlook - WITH SALINITY BARRIERS

Federal End of the Month Storage/Elevation (TAF/Feet)

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
Folsom	512	522	447	359	303	273	259	247	248	261	318	440
Elev.	418	419	410	397	388	382	380	377	377	380	390	409
Monthly River Releases (cfs)												
American	956	954	1920	1958	1474	935	806	863	837	800	800	800

50%-Runoff Exceedance Outlook

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
Folsom	531	569	520	440	345	287	308	347	407	506	601	666
Elev.	420	425	419	409	395	385	389	395	404	417	429	436
Monthly River Releases (cfs)												
American	953	1220	1700	2062	2338	1712	892	850	850	850	3000	4000

Persons engaging,
etc., in strikes against
or advocating over-
throw of U. S. Gov-
ernment.

Affidavit.

Penalty.

may suspend from time to time in whole or in part compliance with this section if he should deem such course to be in the public interest.

SEC. 3. No part of any appropriation contained in this Act, or of the funds made available for expenditure by any corporation included in this Act, shall be used to pay the salary or wages of any person who engages in a strike against the Government of the United States or who is a member of an organization of Government employees that asserts the right to strike against the Government of the United States, or who advocates, or who is a member of an organization that advocates, the overthrow of the Government of the United States by force or violence: *Provided*, That for the purposes hereof an affidavit shall be considered prima facie evidence that the person making the affidavit has not contrary to the provisions of this section engaged in a strike against the Government of the United States, is not a member of an organization of Government employees that asserts the right to strike against the Government of the United States or that such person does not advocate, and is not a member of an organization that advocates, the overthrow of the Government of the United States by force or violence: *Provided further*, That any person who engages in a strike against the Government of the United States or who is a member of an organization of Government employees that asserts the right to strike against the Government of the United States, or who advocates, or who is a member of an organization that advocates, the overthrow of the Government of the United States by force or violence and accepts employment the salary or wages for which are paid from any appropriation or fund contained in this Act shall be guilty of a felony and, upon conviction, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both: *Provided further*, That the above penalty clause shall be in addition to, and not in substitution for, any other provisions of existing law.

60 Stat. 810.

SEC. 4. The Governor of the Panama Canal and the Chief of Engineers, Department of the Army, are authorized to employ services as authorized by section 15 of the Act of August 2, 1946 (5 U. S. C. 55a), in amounts not exceeding \$6,000 for the Panama Canal and not exceeding \$150,000 for the Corps of Engineers, Department of the Army: *Provided*, That the rates for individuals shall not exceed \$100 per diem.

Payment of claims.

60 Stat. 843; 62 Stat.
1008.
28 U. S. C., Supp. II,
§ 2672.
Ante, pp. 62, 106.
60 Stat. 903.
Short title.

SEC. 5. Appropriations for civil functions of the Department of the Army may be used for the payment of claims under the Act of July 3, 1943, and section 403 of the Federal Tort Claims Act (28 U. S. C. 2672); examination of estimates of appropriations in the field; and for health programs as authorized by law (5 U. S. C. 150).

SEC. 6. This Act may be cited as the "Civil Functions Appropriation Act, 1950".

Approved October 13, 1949.

[CHAPTER 690]

AN ACT

October 14, 1949
[H. R. 165]
[Public Law 366]

To authorize the American River Basin development, California, for irrigation and reclamation, and for other purposes.

American River
Basin development,
Calif.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Central Valley project, California, authorized by section 2 of the Act of Congress of August 26, 1937 (50 Stat. 850), is hereby reauthorized to include the American River development as hereinafter described, which development is declared to be for the same purposes as described and set forth in the Act of Congress of August 26, 1937 (50 Stat. 850).

Folsom Dam and
Reservoir.

SEC. 2. The American River development shall consist of: Folsom

Dam and Reservoir having a storage capacity of approximately one million acre-feet, to be constructed by the Corps of Engineers at such point below the confluence of the North Fork and the South Fork of the American River near the city of Folsom, California, as the Secretary of the Army and the Chief of Engineers after consultation with the Bureau of Reclamation and other appropriate State, Federal, and local agencies may find most advisable; and the following features for the development and use of water, to be constructed, operated, and maintained by the Secretary of the Interior through the Commissioner of Reclamation: A hydroelectric power plant with a generating capacity of approximately one hundred and twenty thousand kilowatts, and necessary hydroelectric afterbay power plants and necessary electric transmission lines to the nearest practical interconnection with the Central Valley project transmission system; a storage dam with a capacity of approximately forty thousand acre-feet to be located on Sly Park Creek, a tributary of the North Fork of Consumas River, with necessary appurtenant works, including a diversion dam on Camp Creek, tunnel, conduit, and canals for the delivery of water to lands in El Dorado County, and incidental works appurtenant thereto. The Secretary of the Interior, through the Bureau of Reclamation, is hereby further authorized and directed to conduct the necessary investigations, surveys, and studies for the purpose of developing plans for disposing of the water and electric power which would be made available by the project, including studies of such supplemental works and equipment as may be required to maintain a firm supply of electric energy, and render reports thereon which would set forth the works required for such disposition, together with findings as to their engineering and financial feasibility, including a study of the water resources and requirements of the entire American River watershed and the areas serviceable therefrom, and particularly of a diversion canal at the highest feasible level extending southerly from Folsom Reservoir as will permit the maximum beneficial use of the water for irrigation of the lands lying under said canal in El Dorado and Sacramento Counties; a diversion canal at the highest feasible level for the purpose of securing the maximum beneficial use of the water in Placer County extending northerly from such reservoir to a point on the Bear River in the vicinity of Sheridan, California, and a conduit or conduits with necessary pumping plants and supplemental works extending from the most feasible diversion point on the Central Valley project, California, to serve lands and municipalities in Contra Costa, Alameda, Santa Clara, San Joaquin, and San Benito Counties.

Nothing contained in this Act shall be construed by implication or otherwise as an allocation of water and in the studies for the purposes of developing plans for disposal of water as herein authorized the Secretary of the Interior shall make recommendations for the use of water in accord with State water laws, including but not limited to such laws giving priority to the counties and areas of origin for present and future needs.

Said studies and the reports thereon shall be submitted to the proper State authorities under the procedure provided for in the Flood Control Act of 1944 (Public Law 534, Seventy-eighth Congress, second session).

Folsom Dam and Reservoir, upon completion of construction by the Corps of Engineers, to the extent where water from said reservoir is ready to be turned either into the power plant or conduits, shall be transferred to the Bureau of Reclamation for operation and maintenance under the supervision of the Secretary of the Interior together with the other features of the American River development herein

Hydroelectric power plant.

Investigations, surveys, etc.

Recommendations of Secretary.

Reports, etc., to States.
53 Stat. 837.
53 U. S. C. §§ 701a-1, 701c, 701f, 701i notes, 703, 709; Supp. II, § 701c note; 16 U. S. C., §§ 460d, 825; 43 U. S. C., § 390.

Transfer to Bureau of Reclamation.

43 U. S. C. § 372 *et seq.*; Supp. II, § 385a *et seq.*

58 Stat. 890.
33 U. S. C. § 709.
Consultation with local interests.

Coordination, etc., of works.

Appropriation authorized.

authorized for construction by the Bureau of Reclamation, all in accordance with the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto). After the transfer as provided herein, the dam shall be operated for flood control in accordance with criteria established by the Secretary of the Army as provided for in section 7 of the Flood Control Act of 1944 (Public Law 534, Seventy-eighth Congress, second session).

SEC. 3. In locating and designing the works authorized for construction by section 2 of this Act the Secretary of the Army and the Chief of Engineers, the Secretary of the Interior and the Commissioner of Reclamation shall give due consideration to the report set forth in Bulletin Numbered 26 of the Division of Water Resources of the Department of Public Works of the State of California, and shall consult the local interests to be affected by the construction and operation of said works, through public hearings or in such other manner as in their discretion may be found best suited to a maximum expression of the views of such local interests.

SEC. 4. The Secretary of the Interior is directed to cause the operation of said works to be coordinated and integrated with the operation of existing and future features of the Central Valley project in such manner as will effectuate the fullest and most economic utilization of the land and water resources of the Central Valley project of California for the widest possible public benefit.

SEC. 5. There are hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as are necessary to carry out the purposes of this Act.

Approved October 14, 1949.

[CHAPTER 691]

AN ACT

October 14, 1949
[H. R. 3191]
[Public Law 357]

To amend the Act approved September 7, 1916 (ch. 458, 39 Stat. 742), entitled "An Act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes", as amended, by extending coverage to civilian officers of the United States and by making benefits more realistic in terms of present wage rates, and for other purposes.

Federal Employees' Compensation Act Amendments of 1949.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Employees' Compensation Act Amendments of 1949".

TITLE I—SUBSTANTIVE AMENDMENTS

WAITING PERIOD MODIFIED

39 Stat. 743.

39 Stat. 743.
5 U. S. C. § 759.
Post, p. 862.
39 Stat. 743.

Use of leave.

Supra.

SEC. 101. (a) Section 2 of the Act approved September 7, 1916 (ch. 458, 39 Stat. 742) (hereafter in this Act referred to as the "Federal Employees' Compensation Act"), as amended (5 U. S. C., 1946 edition, sec. 752), is hereby amended to read as follows:

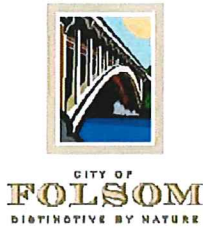
"SEC. 2. That with respect to the first three days of temporary disability the employee shall not be entitled to compensation except as provided in section 9, unless such disability exceeds twenty-one days in duration or is followed by permanent disability."

(b) Section 8 of such Act (5 U. S. C., 1946 edition, section 758), is amended to read as follows:

"SEC. 8. If at the time the disability begins the employee has annual or sick leave to his credit he may use such leave until it is exhausted, in which case his compensation for disability shall not begin, and the time periods specified in section 2 shall not begin to run, until the annual or sick leave has ceased."

Enclosure 8

Letter to Mr. Michael Buckman, dated May 13, 2014



May 13, 2014

State Water Resources Control Board
c/o Michael Buckman
P.O. Box 2000
Sacramento, California 95812-2000

VIA E-MAIL
michael.buckman@waterboards.ca.gov

Re: CVP/SWP Temporary Urgency Change – Comments on May 2 Order and
Request for Folsom Reservoir Operations Plan

Dear Mr. Buckman:

As discussed in our March 10, 2014 and April 25, 2014 letters to the SWRCB, as well as in our presentation at the SWRCB's May 6, 2014 workshop on the temporary urgency order for Central Valley Project (CVP) and State Water Project (SWP) operations, we are extremely concerned about how Folsom Reservoir will be operated if the drought persists. The 500,000 people and thousands of businesses in our communities depend on the reservoir for their primary water supply. We therefore must take all necessary steps to ensure that there are adequate plans to meet our communities' water-supply needs if the drought does persist. To address this concern, we have requested that the SWRCB modify the temporary urgency order to require the Bureau of Reclamation to submit a Folsom Reservoir and Lower American River operations plan that explains how Reclamation will plan to operate that reservoir to ensure that it can provide water supplies to our agencies if next winter is dry. We repeat that request now and respectfully ask that the SWRCB insert in the temporary urgency order the following term, which we have updated to reflect the time since our initial request:

No later than June 1, 2014, Reclamation will deliver to the Deputy Director Reclamation's plan for operating Folsom Reservoir and the Lower American River, assuming 90% exceedance hydrologic conditions through March 15, 2015. The operations plan must demonstrate how Reclamation will meet the needs of water suppliers in the American River region, pursuant to their CVP contracts and water rights, and the lower American River during this water year and the 2014-2015 water year. To develop this plan, as soon as possible, Reclamation will consult with water suppliers adjacent to Folsom Reservoir and the lower American River, as well as the Water Forum, concerning: (1) Reclamation's operation of that reservoir this water year; (2) a storage target for September 30, 2014; and (3) operations during the 2014 fall salmon spawning season. Reclamation will continue to consult with affected American River stakeholders through at least March 15, 2015 and will deliver any amendments to its operations plan to the SWRCB promptly upon Reclamation's adoption of those amendments. Reclamation will operate Folsom Reservoir according to its operations plan until

Mr. Michael Buckman
May 13, 2014
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at least March 1, 2015. Reclamation will promptly deliver copies of its operations plan that is due June 1, 2014, and any amendments to that plan, to the affected water suppliers and the Water Forum.

While we have requested that very similar language be inserted into the temporary urgency order in our previous comments, recent developments emphasize the importance of Reclamation preparing an operations plan to address how it will meet municipal and industrial needs in the Sacramento region. During the May 6, 2014 workshop on the temporary urgency order, SWRCB members identified a need for agencies to plan for next year if it were to be dry. We believe that our proposed term would help address that need.

The Most Recent American River Operational Projections Do Not Show How Our Communities Would Be Able To Access Our Primary Water Source

We enclosed, with our March 10 and April 25 letters, what were then Reclamation's most current projections for how it would operate Folsom Reservoir and the Lower American River. Those projections specified the reservoir storage and downstream releases that Reclamation believed it would maintain during the November 2014-January 2015 period. Unfortunately, Reclamation's latest operational projection includes no information about how Reclamation may operate Folsom Reservoir and the Lower American River after September 30. (A copy of that latest projection, dated April 2014, is enclosed.) Our agencies need a more complete projection that extends through the winter that assumes dry conditions will continue. Our proposed addition to the urgency order would address that need.

Projections for streamflows during the November-January period are crucial for operations of the Lower American River and for our agencies' planning. The Lower American River's fall-run Chinook salmon spawn during that period. As the SWRCB is aware, it is at best difficult to change streamflows during that period because reducing streamflows during that period may lead to losses of salmon redds and juvenile salmon from dewatering and stranding. The maintenance of relatively high fall-run spawning streamflows last fall was one of the primary reasons that Folsom Reservoir was drained so low last winter. Last year of course was extremely dry, with Reclamation's March 2013 operational projections showing that, in a 90% exceedance scenario, Folsom Reservoir would be drawn below 200,000 acre-feet in December 2013. (A copy of this projection is enclosed.) This projection could have triggered the terms of NMFS's 2009 biological opinion that allow for Lower American River streamflows where Folsom Reservoir storage is projected to decline below 200,000 acre-feet at any time during the following 12 months. (2009 BiOp, Appendix 2-D, p. 1 (copy enclosed).) During the fall spawning season, however, releases from Folsom Reservoir and to the Lower American River from Nimbus Dam were approximately 1,300 to 1,400 cubic feet per second (cfs) through October, November and December 2013, until December 29, when releases were reduced to approximately 1,100 cfs. Releases then ramped down from that 1,100 cfs to approximately 600 cfs by January 13, 2014.

As the SWRCB is aware, at the May 6 workshop, we presented NASA's photograph of Folsom Reservoir on January 16, 2014, when it held only 170,000 acre-feet. (Our presentation from the workshop is enclosed for your ease of reference.) The reservoir continued to decline

Mr. Michael Buckman
May 13, 2014
Page 3

until February 6, when it held only 163,000 acre-feet and the reservoir's level was only 27 feet above our water-supply intake. Due to the 2013-2014 operations described above, the reservoir declined from approximately 361,000 acre-feet on September 30, 2013 to the 163,000 acre-feet on February 6, 2014. Approximately 175,000 acre-feet of this 198,000 acre-feet decline occurred during the October 2013-December 2013 period, when releases were primarily in the 1,300-1,400 cfs range. Without an operations plan that demonstrates how Reclamation will operate Folsom Reservoir and the Lower American River if conditions remain dry, we are extremely concerned about our ability to serve our communities next year. For example, we believe that our water-supply intake would be dry sometime in the late winter or spring of 2015 if: (1) the drought were to persist; (2) end-of-September storage were to be 304,000 acre-feet as stated in the latest operational projection we have seen, which is enclosed; and (3) October 2014-January 2015 releases from Folsom Reservoir were to be similar to October 2013-January 2014 releases. Of course, given California's usual hydrology, if our intake were to go dry in the late winter or early spring, it might then stay dry until the winter of 2015-2016. That result would be catastrophic for our communities.

It is imperative for both our water supplies and the American River's fisheries that this experience not be repeated in the coming water year. Particularly in light of the current absence of projections for American River operations after September 30, 2014, we respectfully repeat our request that the SWRCB modify the urgency order to include our proposed term, which would require Reclamation to produce an American River operations plan.

Development Of, And Operation To, A Folsom Reservoir And Lower American River Operations Plan Could Address Emerging Conflicts Among The Coordinated Operations Agreement, American River Settlement Contracts, Reclamation's Water-Right Permit Terms And The Area-Of-Origin Laws

Currently, in addition to the absence of projections for how Folsom Reservoir and the Lower American River will be operated after September 30, overall CVP and State Water Project (SWP) operations under the Coordinated Operations Agreement (COA) apparently are impacting Folsom Reservoir's storage and our water supplies. The most recent April 2014 projection of CVP operations shows elevated American River releases with streamflows of 2,000 cfs in June, 1,855 cfs in July and 1,316 cfs in August. Sufficient information for us to understand why American River releases would be so high during the summer, given the depressed state of Folsom Reservoir storage, has not been made available to us. What we understand, however, is that those elevated releases from the reservoir are being driven by the COA because: (1) the SWP's operations upstream of and within the Delta are increasing the amount of water that the CVP must release to address Delta conditions under the COA; and (2) concern for maintaining a cold-water pool in Shasta Reservoir to support winter-run salmon is causing releases from Folsom to be preferred to releases from Shasta, notwithstanding the potentially significant impacts on our primary water source and the American River's fisheries.

It causes us great concern that the basic water supply for our communities is being put at risk because of the interrelated operations of the SWP and the CVP, particularly given that: (A) Folsom and San Juan hold water rights that are senior to the SWP and the CVP; and (B) those rights are reflected in settlement contracts that have no dry-year reduction provisions. In

Mr. Michael Buckman
May 13, 2014
Page 4

addition, in issuing the CVP's water-right permits for Folsom Reservoir, the State Water Rights Board sought to protect Roseville and other local communities that had filed priority applications for American River water. In Decision 893 (p. 54), that board stated:

[A]vailability of water to such applicants is reasonably assured by the terms to be contained in the permits to be issued the United States restricting exportation of water under those permits insofar as exportation interferes [*sic*] with fulfillment of needs within Placer, Sacramento and San Joaquin Counties.

Moreover, CVP and SWP operations that would not make water available to meet the needs of our communities would be inconsistent with the area-of-origin laws, which apply to both the CVP and the SWP. Water Code section 11460 states (emphasis added):

In the construction and operation by the department of any project under the provisions of this part a watershed or area wherein water originates . . . shall not be deprived by the department directly or indirectly of the prior right to all of the water reasonably required to adequately supply the beneficial needs of the watershed, area, or any of the inhabitants of property owners therein.

(See also Water Code § 11128 (§ 11460 applies to the CVP).)

The operations plans for Folsom Reservoir that we are requesting could resolve these problems by demonstrating how Reclamation will operate that reservoir to ensure that the coordinated operation of the CVP and the SWP will not result in serious impacts to – or even the physical inability to access – our water supplies. We agree in large part with the concerns about coordinated CVP and SWP operations stated by Friant Water Authority in its April 28, 2014 protest. The CVP and SWP must not be operated so senior rightholders and water users protected by CVP permit terms and the area-of-origin laws are subjected to the serious risk that they will be unable to access water from the CVP while, through COA, water is being exported under the SWP's junior rights. While we do not agree with Friant that the CVP is not developing project water supplies this year, we agree that operations under the COA must not result in impacts on CVP settlement contractors and other CVP contractors specifically protected by the terms of CVP's water-right permits.

Conclusion

After the experience of this last year, when our communities' primary water source came perilously close to going dry, it is imperative that Reclamation and the other agencies involved in operating Folsom Reservoir demonstrate that they will be able to operate the reservoir to meet the needs of the 500,000 people and thousands of businesses that we serve. We respectfully request that the SWRCB modify the temporary urgency order for CVP and SWP operations to include our proposed term that would require Reclamation to produce an operations plan for the reservoir and the American River.


Mr. Michael Buckman
May 13, 2014
Page 5

Very truly yours,


CITY OF FOLSOM

CITY OF ROSEVILLE

SAN JUAN WATER
DISTRICT

By: 

Marcus Yasutake
Environmental and
Water Resources Director

By: 

Ed Kriz
Director, Environmental
Utilities

By: 

Shauna Lorance
General Manager

Enclosures

8618/American River/L051214rsb SWRCB Order

Cc (w/encl.): Hon. Tom McClintock

Hon. Ami Bera

Hon. Ted Gaines

Hon. Jim Nielsen

Hon. Darrell Steinberg

Hon. Lois Wolk

Hon. Ken Cooley

Hon. Beth Gaines

Hon. Jim Frazier

Felicia Marcus

Frances Spivy-Weber

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David Murillo

Drew Lessard

Tom Gohring

Ron Stork

Clyde Macdonald

February 4, 2015

Mr. Tim Rust
Bureau of Reclamation
2800 Cottage Way
Sacramento CA 95825

Sent via U. S Mail and email to trust@usbr.gov

**SUBJECT: CENTRAL VALLEY PROJECT MUNICIPAL AND INDUSTRIAL WATER SHORTAGE POLICY DRAFT
ENVIRONMENTAL IMPACT STATEMENT (DEIS) - COMMENTS**

Dear Mr. Rust,

The purpose of this letter is to provide comments on the Central Valley Project Municipal and Industrial Water Shortage Policy Draft Environmental Impact Statement (DEIS). We apologize for sending our written comments after the deadline. Our water counsel Martha Lennihan did communicate them to you by telephone before the deadline, and we appreciate the opportunity to have had that dialogue.

The City of Sacramento (Sacramento) provides municipal and industrial water supply to over 475,000 residents and 137,000 customer accounts. In addition, Sacramento is also a wholesale water supplier to a number of local water agencies. Sacramento has an operating contract (often referred to as a settlement contract) with Bureau of Reclamation dated June 28, 1957.

The DEIS indicates in the tables on Pages ES-7 and 4-11 that Sacramento is a water service contractor subject to the Municipal and Industrial Water Shortage Policy (M&I WSP.) The DEIS should be revised to remove Sacramento from the tables identifying it as a water service contractor, and accurately classify the City as a settlement contractor. The hydrologic and other analyses performed for the environmental review should accordingly accurately treat the City's water rights and supply.

We appreciate the opportunity to offer this comment. Please call me at (916) 808-1416 if you have any questions.

Sincerely,



James Peifer, PE
Supervising Engineer

City of Sacramento Department of Utilities
916-808-1400
1395 35th Avenue
Sacramento, CA 95822

McNeillLawOffices

CIVIL LITIGATION & APPEALS

March 13, 2015

Michael Inthavong
Tim Rust
US Department of the Interior
Bureau of Reclamation, Mid-Pacific Region
2800 Cottage Way
Sacramento, CA 95825
trust@usbr.gov
minthavong@usbr.gov

Re: Central Valley Project Municipal and Industrial Water Shortage
Policy Draft Environmental Impact Statement

Dear Messrs. Inthavong and Rust:

Thank you for the opportunity for Clear Creek Community Services District to submit comments on the Central Valley Project Municipal and Industrial Water Shortage Policy Draft Environmental Impact Statement that was released for review on November 14, 2014. As you may recall, Clear Creek Community Services District was represented and made comments at the public meeting in Sacramento that was held on Monday, December 8, 2014. This letter is being submitted to both reiterate the oral comments made at this public meeting and to offer additional comments on the CVP M&I WSP Draft EIS.

Clear Creek Community Services Districts submits the following comments for consideration by the United States Bureau of Reclamation:

1. The CVP M&I Water Shortage Policy should be renamed the "CVP M&I and Agricultural Water Shortage Policy" or simply the "CVP Water Shortage Policy" so that its true intent – to provide a policy for water shortages that applies to both municipal and industrial and agricultural water – is clear from the title. As is evident from the alternatives addressed in the Draft EIS, agricultural water is impacted first and most dramatically by the so-called "Municipal and Industrial" Water Shortage Policy. The table of declining allocations of M&I water & Ag water side-by-side could not be a clearer illustration of how M&I water allocations and Ag water allocations are inextricably intertwined and combined in this policy.

This misnomer has apparently confused even members of Congress – House Bill HR 5781 (the California Emergency Drought Relief Act of 2014, passed by the House on December 9, 2014), Section 204 – Allocations for Sacramento Valley Contractors – mandates agricultural water allocations of 50% to 100% in any “dry” to “wet” year that is not preceded by a “dry” year – an allocation that seemingly flies in the face of the agricultural shortage provisions in the CVP “M&I” Water Shortage Policy. Indeed, HR 5781 even contains provisions that state that it shall not “affect or limit the authority of the Secretary to adopt or modify municipal and industrial water shortage policies” – an indication that the drafters are ignorant of the fact that any legislation affecting the allocation of agricultural water necessarily impacts the draft “M&I” water shortage policy currently being implemented by the USBR.

2

One unfortunate consequence of the deceptive name given to this policy is the suppressed representation and participation of Ag contractors in the process of formulating the policy options and in the public participation in the environmental review for this draft EIS. I have spoken directly with representatives of numerous Ag contractors and asked why they were not involved in the process, but received the reply that to their understanding this is only a policy for M&I water. I believe this misconception is widespread among Ag contractors and unfortunately undercuts the legitimacy of the entire process.

3

2. No accommodation is made in any of the alternatives addressed by the EIS for the delivery of water to households – that means people – located on agricultural parcels receiving agricultural water. Many of the agricultural users in the Clear Creek Community Services District are small farmers who live with their families in households on their farms; that’s about 300 Ag water users and a little over a 1,000 people. They receive their water for household use as an “incidental” use of their Ag water, as is specifically provided for in our water service contract (that is a common feature of many water service contracts and has been a policy of Reclamation from its inception to aid the “family farm”). When agricultural water allocations are reduced to 0%, these users are not only left without any water for their crops, but potentially without any water for themselves and their families. On at least two occasions in recent years Clear Creek CSD has been forced to buy water on the open private market (at considerable expense to the District) because the allocations of Ag water had gone down to 0%, and the District has to figure out some way to provide water to over a 1,000 people. The District has complained numerous times to Reclamation about this irrational and costly total denial of water to people who normally receive incidental Ag water, and I have commented several times in the workshops for the development of the new WSP that this problem has to be corrected. Yet Reclamation has turned a deaf ear, and this draft EIS refuses to even identify the issue I have explicitly raised in your public process much less make any attempt to correct the problem. It should go without saying that the total denial of water to over 1,000 people is a severe “environmental impact” of the proposed WSP in all its versions. Presumably Clear Creek CSD is not alone and there are many other water service contractors with the same problem, even if on a lesser scale. The failure of the draft EIS to even discuss this issue, much less attempt provisions that would correct the problem, is inexcusable.

4

3. Any of the water shortage policies that restrict the District's water allocation to an amount less than its demands for beneficial use (and which are below its contractual amount of 15,300 acre feet) violates the District's "area of origin" rights of first use as a "water shed of origin" and/or "county of origin" (see California Water Code §§11460, 10505, and 11128), given that the Clear Creek watershed in Shasta County generates over 112,000 acre feet of water annually – many times the contract quantity of the District. To be clear about this, the District is not suggesting that there needs to be any modification of its water service contract. The District is not asking for water above the contractual maximum amount of 15,300 acre feet. However, when Reclamation is unable to deliver the full amount of water demanded by all the various contractors in the CVP, the allocation process carried out administratively by Reclamation must comply with the State laws relating to "area of origin" pursuant to and as incorporated in the permits given to Reclamation by the State to operate the CVP in the first instance. As long as the water produced in the "area of Origin" for the District exceeds its demands for beneficial use, the WSP must honor the legal obligations imposed on Reclamation at the inception of the CVP to meet the District's needs first in any administrative water shortage allocation process.

5

4. The limitation on conversion of Ag water to M&I water for shortage allocation purposes violates the contract rights of the District and effects a taking of its M&I water. This need to be understood in the context of what Reclamation has done CVP-wide without consideration of the impacts on Clear Creek CSD and its unique circumstances.

Alternative 1, the continued implementation of the current 2001 Draft M&I WSP, and Alternative 4, the "Updated M&I WSP", provide that Ag water converted or transferred after September 30, 1994 for M&I use would be subject to the Ag water shortage allocation, despite its actual use for M&I purposes. This essentially makes any water converted from Ag water to M&I water in order to accommodate a growing urban population completely unreliable and useless – as any such converted water will continue to be subject to an agricultural water allocation that could result in a 0% allocation to the new M&I users. It is essentially a check on the large Ag water contractors that use 99% of their contractual water for Ag purposes, to prevent them from turning into M&I water "banks" that sell off Ag water at mark-ups of 1000% (give or take) while fueling unconstrained new development made possible by a new source of urban M&I water. The possibility of such wholesale conversions of Ag to M&I water did not exist until about 2001 when Reclamation changed all of the existing exclusively Ag water service contracts in the CVPIA process (which authorized water only for "irrigation" purposes) to dual purpose contracts that allow water for either Ag or M&I purposes. The original (never finalized) September 11, 2001 WSP – limiting the conversion of Ag to M&I water – had to be put in place to, among other things, put a constraint on Reclamation's creation of this vast pool of potential M&I water that did not exist in the past.

6

However, Clear Creek CSD (unlike the Ag contractors with hundreds of thousands of acre feet of purely AG water prior to their contract conversions) has

always been a “mixed use” contractor going back to a 1965 water service contract that allowed the District to use its entire contract quantity for either M&I or Ag use without constraint. Further, Clear Creek CSD (unlike any other CVP contractor we know of) filters and treats 100% of all of the water it takes from Reclamation, and all of the water it serves to customers is 100% potable water, delivered 100% through pipes and meters (as opposed to canals and ditches common to Ag water delivery), with plans and long term population growth projections that indicate that eventually nearly 100% of the District’s contract quantity will be used for M&I purposes, with investments in filtration capacity and land space provided on federal land for expansion of the treatment plant to accommodate 100% M&I water for its full contract quantity as the need develops over the life of its water service contract. Even the Ag water usage in Clear Creek CSD draws from the same major pipeline, which means that filtered treated potable water is being applied to fields and orchards for Ag water usage – a practice unheard of in the CVP and a fact that militates toward the ultimate conversion of all Ag water to M&I usage in the long term due to obvious economic and practical considerations. (The origin of this anomalous water usage lies in the unique circumstances of the creation of the Reclamation facilities that serve the District; suffice to say the current circumstances were not foreseen in 1965.) The WSP alternatives now being considered and their constraints on present and future Ag-to-M&I conversion are a betrayal of the historical promises and assurances of Reclamation to the District that its water was and is freely usable for either Ag or M&I, and legally the incorporation of such constraints on conversion into the water service contract via the WSP creates a breach of contract and a “takings” of the District’s property interests.

6

The conversion limitation in the WSP is then exacerbated by an artificial “cap” on M&I water placed in the “Terms and Conditions” of the WSP alternatives (see Alternative #4, Term and Condition No. 3) that constrains M&I water to the amount shown in a Water Needs Analysis developed in the year 2000 by the Bureau of Reclamation – without the knowledge of the District and without consultation with the District – that unilaterally and erroneously projected the District’s future water demand for M&I to be 8,283 acre feet. However, in Appendix A to the draft EIS for the WSP, the Bureau (more accurately, though still unilaterally) predicts that the projected M&I demand for the District will be its full contract quantity of 15,300 acre feet. The NEPA environmental review is based on projected full contract quantity use of 15,300 acre feet of water as M&I – a calculation with which the District agrees and that Reclamation now describes as based on “more accurate data” (see p. 2-20 of the draft EIS); yet the actual WSP alternatives still contain the old inaccurate WNA analysis as a limiting factor on M&I use. The two-fold consequence is that the environmental analysis is conflicted/inaccurate, and Clear Creek CSD is falsely limited to 8,283 acre feet of M&I water – leaving it with contract and condemnation damages for the remainder of its contract water that it cannot use, sell or trade as M&I water.

5. One of the “Issues of Known Controversy” listed in Section 1.6 include an acknowledgment that “[t]he EIS should analyze the impacts to water service contractors who have limited access to alternative water supplies and to ‘mixed

7

use' contractors." Clear Creek CSD is one of these few "mixed use" contractors, but it appears that, yet again, none of the alternatives considered by the EIS analyze the impacts on such "mixed use" contractors, especially as to those individuals living on agricultural parcels, as indicated in above comment number 3, and the conversion of agricultural water to M&I water by "mixed use" contracts with growing urban populations, as indicated in above comment 4. The EIS continues to ignore the reality of a growing urban population in mixed-use water districts and the consequent need for increased M&I use as well as the environmental impacts of this increased use.

7

6. Despite numerous and on-going complaints from CVP contractors in workshops and other Reclamation forums for discussion of the WSP that have occurred over the last 10 years, the WSP alternatives continue to punish contractors for the development of non-CVP water sources that may supplement rather than replace CVP water allocations. See for example Term and condition No. 1 in alternative No. 4, which states that Reclamation may "consider" the extent to which non-CVP water is available in making shortage allocations of CVP water if the non-CVP water is not solely used to replace CVP supplies. That is, a CVP contractor that may have other non-CVP water available during a drought may also receive a lesser allocation of CVP water so that more needy water users without those alternatives can be given more water by Reclamation. Somehow Reclamation seems not to understand that this WSP discourages the development of alternative water sources and investment of capital in the facilities to that kind of water available, at a time when we should be looking for water anywhere we can find it. The Draft EIS needs to acknowledge this dis-incentive to water development and its adverse environmental consequences, compared to a policy that allows and encourages the development of new water sources.

8

7. Reclamation claims that it has the privilege or authority to determine for the water service agency contractors whether is or is not a "water shortage emergency" for purposes of making allocations of M&I water below the 75% historical use level. This conflicts with Water Code §350 et seq. that puts that authority only in the hands of the individual water agencies. The draft EIS cannot perform accurate review on a false premise imbedded in the WSP. This need to be revised or the EIS may be found lacking.

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8. It appears that the wrong map was used as Figure 4-2. Shasta Division and Trinity River Division Water Service Contractors. Instead of the Shasta and Trinity divisions, the Delta Division is pictured.

10

Respectfully Submitted,



WALTER P. MCNEILL
MCNEILL LAW OFFICES



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WATER DISTRICT

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Jerry Brown
General Manager

December 23, 2014

David G. Murillo, Regional Director
United States Bureau of Reclamation
Mid-Pacific Region
2800 Cottage Way
Sacramento, CA 95825-1898

Subject: Request for Extension of the Public Review Period for the Central Valley Project (CVP) Municipal and Industrial Water Shortage Policy (M&I WSP) Draft Environmental Impact Statement (Draft EIS)

Dear Mr. Murillo:

The Contra Costa Water District (District) requests an extension of time for public review of the Draft EIS to **March 13, 2015**.

I appreciate that Reclamation has provided regular updates on the status of the CVP M&I WSP and I am pleased that Reclamation is moving forward with finalization of the policy. The process toward finalization has been extraordinarily protracted, as evidenced by the fact that the current draft M&I WSP dates back to 2001. Efforts in 2003-2005 produced a draft revised policy and a NEPA environmental assessment but the proposed policy in those documents was not adopted. In reinitiating efforts towards a final M&I WSP in 2010, Reclamation held a number of stakeholder workshops and NEPA NOI meetings that extended into 2011. Subsequently, stakeholders were told that issues had arisen with the continuity of Reclamation's consultant contract, which led to delay of more than a year in work towards an M&I WSP. More recently, stakeholders were informed that the consultant's work had resumed and that a draft EIS would be issued in 2014. But stakeholders did not anticipate that the window of time offered by Reclamation for public review would be only 45 days and span the end-of-year holiday period when many stakeholder employees and advisors take vacations. The fact that Reclamation has taken many years to develop and publish the Draft EIS should not cause a sudden and impractical rush towards closure at the expense of receiving adequate stakeholder and public comment.

1

David G. Murillo, Regional Director
United States Bureau of Reclamation
CVP M&I WSP Draft Environmental Impact Statement
December 23, 2014
Page 2

The Draft EIS is a document of substantial length and great detail that will require approximately three months for proper review. Accordingly, I am requesting that the review period be extended to Friday, March 13, 2015. Thank you for your consideration of this request. Please contact me at (925) 688-8034 if you have any questions.

Sincerely,



Jerry Brown
General Manager

JB/MP:wec



LA08

Board of Directors

Joseph L. Campbell
President

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Jerry Brown

March 13, 2015

Mr. Tim Rust

Program Manager

United States Department of the Interior, Bureau of Reclamation

2800 Cottage Way, MP-410

Sacramento, CA 95825

Subject: M&I Water Shortage Policy Draft Environmental Impact Statement

The Contra Costa Water District (CCWD) appreciates the opportunity to comment on the Draft Environmental Impact Statement (DEIS) for Central Valley Project (CVP) Municipal and Industrial (M&I) Water Shortage Policy (WSP). CCWD serves untreated and treated water to approximately 500,000 people throughout central and eastern Contra Costa County. CCWD is the first CVP contractor and the largest M&I contractor, and the CVP has historically been, and will continue to be, its primary water supply. In 1998, CCWD invested \$450 million to construct the Los Vaqueros Project to improve water quality for its customers and to provide emergency storage. Since then, CCWD's customers have invested an additional \$210 million to construct the Middle River Intake on Victoria Canal and the Los Vaqueros Reservoir Expansion Project to further protect delivered water quality and to improve water supply reliability.

1

CCWD opposes Alternative 2 (Equal Agricultural and M&I Allocation) and Alternative 3 (Full M&I Allocation Preference) in the DEIS. Alternative 2 does not give priority to delivering water supply relied upon by M&I contractors to meet Public Health and Safety requirements, and neither alternative represents a reasonable methodology for allocating water shortages among CVP contractors.

CCWD supports Alternative 1, the No Action Alternative in the DEIS inasmuch as it is the current policy being implemented, which is described on Page 2-4 as the "2001 Draft M&I WSP, as modified by Alternative 1B from the 2005 EA". The No-Action Alternative and 2001 M&I WSP reflect Reclamation's historical practice over many decades in allocating water during shortages to sustain urban areas during periods of drought and to protect public health. CCWD also supports further evaluation of Alternatives 4 and 5 in the DEIS. Alternatives 1, 4, and 5 should all be modified to remove inconsistencies between the DEIS and the current Draft WSP related to considerations for allocations under Public Health and Safety conditions, described in the following comments.

2

Public Health and Safety

The DEIS notes that Reclamation will strive to meet "unmet" Public Health and Safety demand, considering the availability of an agency's non-CVP supplies. The approach of providing only

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for unmet PH&S demands provides a disincentive for contractors to invest in new non-CVP supplies, and penalizes agencies that already have made such investments. While it is recognized that *extraordinary conditions* may warrant adjustments to CVP allocations, adjustments for available non-CVP supplies should be the exception, not the rule, and should not be applied where the CVP is the primary supply. CCWD requests the following clarifications to the DEIS and WSP regarding Public Health and Safety. The proposed changes are consistent with historical practice and the 2001 Draft WSP.

Page 2-8

During water shortage conditions, Reclamation will strive to deliver CVP water to M&I water service contractors at not less than their ~~unmet~~ PHS water supply level, provided that sufficient CVP water is available, if: 1) the Governor declares an emergency drought condition due to water shortage; or 2) Reclamation, in consultation with the contractor, determines that an emergency exists due to water shortage. *At times of extraordinary circumstance, Reclamation may determine that it is necessary to vary the allocation of M&I water among contractors, taking into consideration a contractor's available non-CVP water.* At that time, the PHS level and unmet need would be determined by the contractor and reviewed by Reclamation.

The PHS water criteria in this analysis are used to estimate the water that is needed for consumption, for operation of necessary water and wastewater facilities, and to avoid economic disruption. The PHS needs will be calculated using the M&I water service contractor's domestic, commercial, institutional, and industrial demands and system losses. ~~M&I water service contractors are expected to first use their non-CVP supplies to meet their PHS demands.~~

Reclamation would ~~then~~ use CVP water to assist the M&I water service contractor to meet ~~the unmet need portion of~~ their respective PHS demand. Unmet need is calculated as the difference between a contractor's PHS demand and its *reasonably* available non-CVP supplies. CVP water provided for PHS needs would be non-transferable.

Appendix A: M&I Contractor Data Summary

The M&I Contractor Data Summary in Appendix A of the DEIS shows CCWD's estimated 2010 Public Health and Safety level as 70,827 acre-feet. It is noted that this value was calculated by Reclamation based on information contained in CCWD's 2010 Urban Water Management Plan. CCWD provides CVP water to retail customers and on a wholesale basis to municipal customers within its service area. The calculated PH&S amount in the DEIS only considers CCWD's retail customers and does not include commercial, institutional, and industrial demands for CCWD's municipal customers. The 2010 estimated Public Health and Safety Value should be updated to

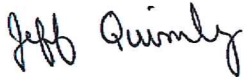
Tim Rust, Program Manager
United States Department of the Interior, Bureau of Reclamation
M&I Water Shortage Policy Draft Environmental Impact Statement
March 13, 2015
Page 3

79,500 acre-feet. This value includes 80% of commercial/institutional and 90% of industrial demands for CCWD's municipal customers.

Once Reclamation has had the opportunity to review the comments received on the DEIS for the M&I WSP, CCWD looks forward to participating in a public stakeholder process to select a policy alternative to be adopted in a final M&I WSP. It is critically important that CCWD and the other M&I contractors are consulted throughout the process and have an opportunity to engage in a transparent, collaborative discussion before Reclamation finalizes the M&I WSP.

Thank you for your consideration of CCWD's comments. Please call me at (925) 688-8310 if you have any questions.

Sincerely,



Jeff Quimby
Director of Planning

JQ/MP:wec



Shasta County

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February 24, 2015

Mr. Tim Rust
 Bureau of Reclamation
 Resources Management Division
 2800 Cottage Way
 Sacramento, CA 95825

Subject: Central Valley Project Municipal and Industrial Water Shortage Policy Draft
 Environmental Impact Statement

Dear Mr. Rust:

This letter is in reference to the Central Valley Project Municipal and Industrial Water Shortage Policy Draft Environmental Impact Statement (Draft EIS). We encourage the Bureau of Reclamation to provide further analysis and discussion of recreation and the cold water pool.

Shasta County is home to Shasta Lake, keystone of the Central Valley Project (CVP) and a significant recreation asset to our community. This document purports to guide Reclamation's management of this critical resource. Cold water pool considerations have gravely impacted CVP operations. The City of Shasta Lake's drinking water supply has been curtailed. Transfers have been denied. This document should examine these impacts. It falls short in several respects.

Chapter 10, Aquatic Resources, lists many endangered fish. These presumably drive cold water needs. There is a lack of discussion of the timing of their cold water demand. There is no quantification of the relative size of the cold water pool in Shasta Lake or the relative impacts of the various alternatives. In fact, the Draft EIS makes it appear that there will be no such impacts. And yet, the cold water pool has been cited in many adverse water supply actions in recent years. If the cold water pool is driving decision making, it should be carefully analyzed in this document.

Chapter 16, Recreation, does not adequately evaluate local recreation impacts. Shasta Lake brings \$60M into the local economy each year – when it's full. Per Table 3-1, the No Action alternative cannot deliver even public health and safety water in ten percent of all years. Even this small change will have far-reaching impacts on available recreational opportunities and the economy. The Draft EIS fails to analyze these.

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February 24, 2015
Mr. Tim Rust, Project Manager
Page 2 of 2

Shasta County hosts key elements of the CVP. We greatly value its contributions to the local region and to the state as a whole. It needs to be carefully managed to maximize these benefits. This document is the avenue to do so. We look forward to appropriate modifications and improvements in future drafts to achieve these goals.

4

Very truly yours,



Leonard Moty, Chairman
Board of Supervisors
County of Shasta